

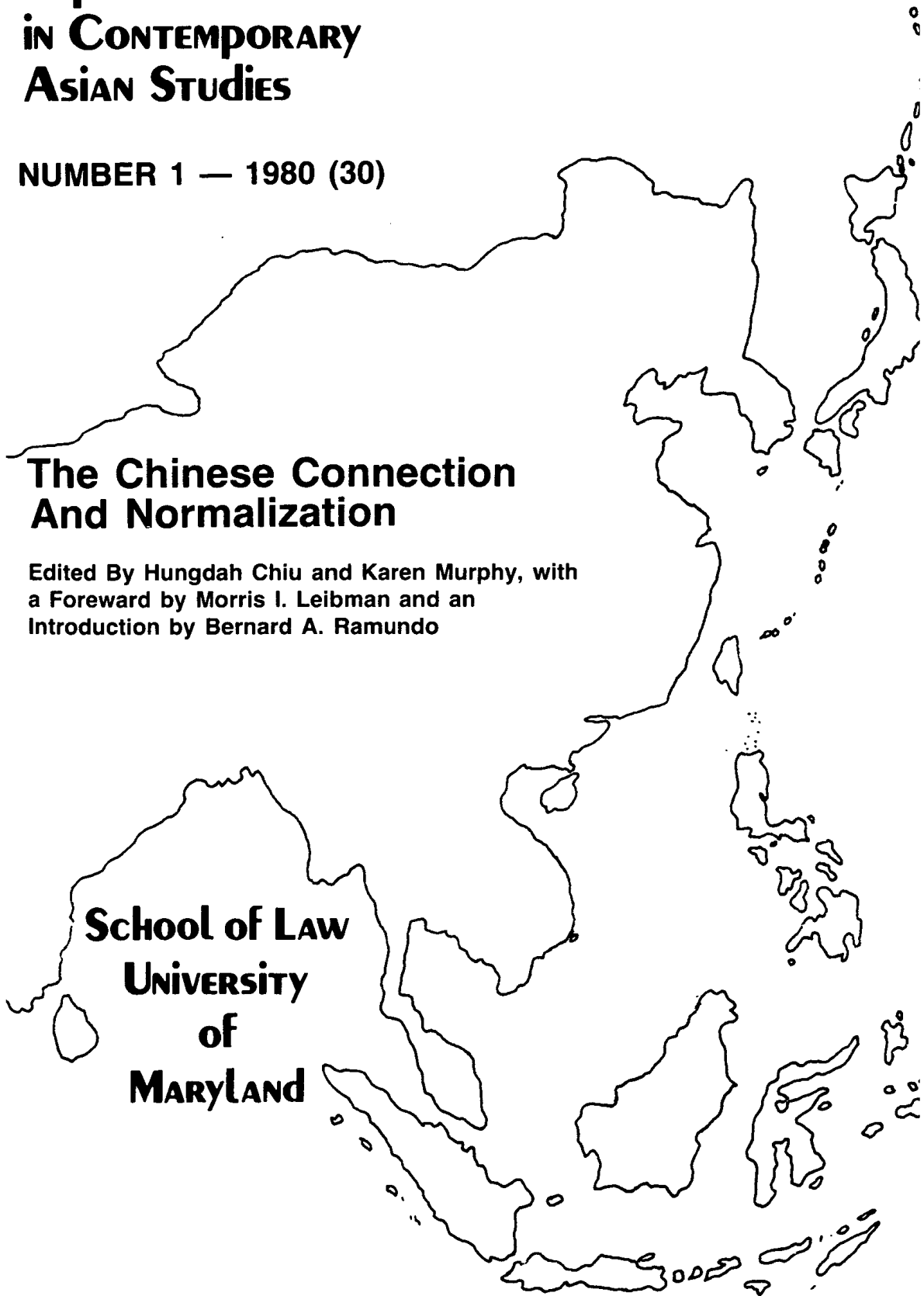
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**The Chinese Connection
And Normalization**

Edited By Hungdah Chiu and Karen Murphy, with
a Foreward by Morris I. Leibman and an
Introduction by Bernard A. Ramundo

**School of LAW
UNIVERSITY
of
MARYLAND**



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Professor Hungdah Chiu, University of Maryland School of Law,
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The Chinese Connection and Normalization

(Proceedings of A Law Professor Workshop of
the American Bar Association)

Edited by

HUNGDAH CHIU

&

KAREN MURPHY

Members of Committee on Workshop Affairs

EDWARD PAUL GIBSON, KAREN MURPHY, CHARLES MEADE, SHAIW-CHEI
YIN, DOUGLAS ANTONIO, JOHN SMALLWOOD AND STEVEN TALSON.

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*With index prepared by Jyh-pin Fa, with the assistance of Julia Fang, for publication
in this series.

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FOREWORD

The materials that follow reflect the substance of the Law Professor Workshop, "The Chinese Connection and Normalization," which was held in Baltimore with the cooperation of the University of Maryland School of Law on June 8-9, 1979. The American Bar Association's Standing Committee on Law and National Security and International Law Section are pleased that the University of Maryland School of Law joined in the Association's effort to enrich the legal educational process through the sponsorship of seminars on contemporary national and international security affairs problems. The Committee acknowledges with appreciation the efforts of Professor Hungdah Chiu of the University of Maryland School of Law and Dr. Bernard A. Ramundo of the National Law Center, George Washington University, in organizing a successful Workshop which involved the participation of more than 125 law professors from all over the United States. Of course, the views presented during the Workshop are those of the commentators and do not represent those of the Association.

The general enrichment effort is intended to increase the relevance of law school instruction and, thereby, better prepare law students for the traditional leadership role of the Bar in governmental and international affairs. International relations, reflecting the practice of states, importantly impact domestic and international legal developments. The rapidity of change in these relations underscores the need for enrichment on a continuing basis. As formal reference materials on political developments tend to become a part of the history of diplomacy because they quickly lose their contemporary relevance, the *ad hoc* conference approach to policy-oriented enrichment is especially useful. The Baltimore Workshop represented such an effort by focusing on the implications of a significant contemporary international development: the long awaited culmination of the process of normalization of the U.S.-P.R.C. relationship launched by the Shanghai Communiqué of 1972. The generally positive reaction to the Baltimore Workshop encourages the Committee in pursuing its objective of planning future Workshops to provide continuing policy-oriented enrichment.

Chicago, 1979

Morris I. Leibman

Chairman, Standing Committee on Law
and National Security

PREFACE

On December 15, 1978, President Carter dramatically announced to the world that the United States (U.S.) and the People's Republic of China (P.R.C.) would establish diplomatic relations on January 1, 1979. He also declared that he would terminate diplomatic relations with the Republic of China (R.O.C.) on that date, terminate the Mutual Defense Treaty with the R.O.C. a year from that date, and withdraw all U.S. forces from Taiwan within four months. There was neither a P.R.C. commitment to refrain from using force against Taiwan nor a unilateral U.S. commitment to the security of Taiwan. Since then, there have been many analyses and evaluations of the President's China move. However, almost all these studies have been focused on one or several issues in connection with recognizing the P.R.C., *e.g.*, the Taiwan issue, trade prospects, playing the China card, etc. The Law Professor Workshop on Chinese Connection and Normalization, while also interested in these individual issues, tried to make an overall evaluation and analysis of the normalization of relations with the P.R.C. from a broader perspective. The remarks and comments made at the Workshop are now edited for publication in this volume. In editing the materials for this volume, I have not strictly followed the sequence of presentation by speakers at the Workshop because the program schedule had been adjusted to accommodate the needs of individual speakers and was not arranged in a strictly logical sequence of presentation.

In Chapter I, Professor Donald W. Treadgold puts the negotiation problem in a historical perspective, which is usually ignored in the voluminous writings on the subject in the post-normalization period. While normalization of relations between the U.S. and the P.R.C. is primarily a bilateral issue between the two countries, it is beyond doubt that such a move must have global and regional implications, especially in the Pacific area. These implications are ably analyzed by Professor Gaston J. Sigur in Chapter II.

Needless to say, the Taiwan issue is one of the most difficult aspects of the normalization process, because of the support of the American public for the R.O.C. on Taiwan and because of Taiwan's status as the eighth largest trading partner of the United States. Most opposition to the President's China move concentrated on the issue of Taiwan. Thus, a *New York Times*-CBS survey conducted the weekend after President Carter's December 15 announcement found that Americans opposed closer ties with China at the expense of Taiwan by a forty-five percent to twenty-seven percent margin.¹ Even after more than a month of publicity and explanation by the Carter

1. *Chinese Concession Reported*, The Baltimore Sun, January 5, 1979, p. A4.

administration, a substantial plurality of the American people still disapproved of recognizing Peking at the expense of relations with Taiwan by a forty-six percent to thirty-two percent margin, according to a survey conducted January 23–26, 1979.² This difficult issue of public support is the subject of Chapter III, by Professors Richard Walker and Yuan-li Wu, who emphasize that the issue remains unresolved and volatile.

Alfred Jenkins, a retired career Foreign Service Officer, whose last assignment was as Deputy Chief of the U.S. Liaison Office in Peking and who enjoys the distinction of being the only diplomat to have served on the mainland both before and after the Communist regime assumed power, enlightens us with his and his colleagues' experiences in dealing with the Chinese in Chapter IV, thus providing more insights in evaluating President Carter's China move.

In Chapter V, the Carter administration's view on the value of normalizing relations with the P.R.C. is presented by Deputy Assistant Secretary of State Roger Sullivan, a career Foreign Service Officer with extensive experience in East Asia. The Administration's view is commented on by two China specialists, Professors Yin-mao Kau and James C. Hsiung, and one economist, Professor Jan Y. Prybyla, thus providing analyses of normalization from different angles.

Because the United States is a constitutional democracy based on the separation of powers and on the checks and balances among the executive, the legislative and the judicial branches of the government, the normalization of relations with the P.R.C. necessarily involved certain domestic legal problems in the United States. These include the authority of the President to terminate the Mutual Defense Treaty with the R.O.C. without prior Congressional approval and the enactment of legislation necessary to continuing the substance of the mutually beneficial U.S.-Taiwan relations in the post-normalization period. These issues are discussed in Chapter VI by Mark Feldman, Deputy Legal Adviser of the State Department, and by representatives of two senators, the Honorable John Glenn and the Honorable Robert Dole, both of whom were actively involved in the normalization problem before and after its completion.

The domestic legal order of the P.R.C. should not be ignored in analyzing normalization because of its close relevance to such specific issues as trade, investment, scientific and cultural exchanges (which are expected to expand following normalization), and the Carter administration's linkage of foreign policy with human rights. In Chapter VII, Professor Jerome Alan Cohen provides a concise analysis of the status of law in the P.R.C. today and Mr.

2. *Poll Finds 46 Percent Still Oppose Ties with China at Taiwan's Expense*, N.Y. Times, January 29, 1979.

Daniel Kelly shares his personal experience of having served twenty years in a labor camp of the P.R.C. The last two chapters deal with trade (Chapter VIII, William Clarke) and scientific and cultural exchange with the P.R.C. (Chapter IX, Holsey G. Handyside and Pierre Shostal), both of which are important aspects of the normalization.

In editing the Workshop remarks and comments for publication, I have decided to include selected important documents concerning normalization (some of which were distributed at the Workshop) and to compile a selected bibliography. Moreover, in view of general interest in trade with China and the human rights situation there, I have also included two excellent government publications in the appendices of this volume: *Doing Business with China* (Department of Commerce 1979) and *Human Rights in the People's Republic of China (Mainland) and the Republic of China (Taiwan)*. Together these documents constitute a source of information on the complex issues surrounding normalization that will enable readers to draw their own conclusions and/or to carry on further research on the subject.

Finally, on behalf of the University of Maryland School of Law, the Maryland International Law Society and the *International Trade Law Journal*, I would like to express our sincere thanks to Mr. Morris I. Leibman, Chairman of the Standing Committee on Law and National Security of the American Bar Association, and to Dr. Bernard A. Ramundo, Consultant to the Committee, for inviting our Law School to co-sponsor the Workshop. We are also grateful to Governor Harry Hughes for proclaiming the Workshop Week, June 3-9, 1979 as International Law Week in Maryland and for his welcoming message to the participants of the Workshop. I wish to express my sincere thanks to Dean Michael J. Kelly, Associate Dean Everett F. Goldberg, Assistant Dean George Regan, Edward Paul Gibson, Karen Murphy, Charles Meade, Sheiw-chei Yin, Douglas Antonio, John Smallwood, Steve Talson, and Lu Ann Young for their assistance in the course of organizing the Workshop. Finally, my appreciation and thanks are extended to the able Editorial Board and Staff of the *International Trade Law Journal* whose tedious work of editing the Workshop speeches and comments made possible this publication.

Hungdah Chiu
Editor and Co-Moderator

January 1, 1980

The State of Maryland



Proclamation from the Office of the Governor

INTERNATIONAL LAW WEEK

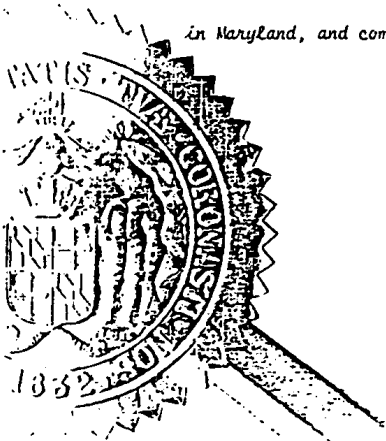
June 3-9, 1979

- WHEREAS, The history of Maryland and its proximity to the national capital have given its people an international outlook and cosmopolitan character; and
- WHEREAS, In observance of International Law Week, the American Bar Association and the Maryland International Law Society and the International Trade Law Journal of the University of Maryland School of Law are sponsoring the Law Professor Workshop - The Chinese Connection and Normalization - in Baltimore on June 8 and 9, 1979; and
- WHEREAS, The State of Maryland has announced its interest in cultural and commercial relations with China, which this conference will enhance;
- NOW, THEREFORE, I, HARRY HUGHES, Governor of the State of Maryland, do hereby proclaim

June 3-9, 1979, as

INTERNATIONAL LAW WEEK

in Maryland, and commend this observance to all our citizens.



Given Under My Hand and the Great Seal of the State of Maryland
this 1st day of June In the Year of Our Lord
One Thousand Nine Hundred and Seventy-Nine

Harry Hughes
Governor

John L. Winick
Secretary of State



STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

June 4, 1979

MESSAGE FROM GOVERNOR HARRY HUGHES

Although I cannot be with you as you begin your two-day discussion of "The Chinese Connection and Normalization," I do want to take this opportunity to officially welcome to Maryland members of the American Bar Association and others who are participating or assisting in the Law Professor Workshop co-sponsored by the ABA and the University of Maryland School of Law.

You are about to examine one of the most significant developments in international relations in recent history. What transpires in the next few years between the United States and the People's Republic of China is likely to affect the course of world events for decades to come.

In general, international relations do not come under a Governor's purview, but we are very pleased to have taken what we believe is a new initiative. I recently announced that this September Maryland will sponsor a visit by an official delegation from Anhui Province of the People's Republic of China and in turn I will head a delegation to China in October. The goal of these exchange visits is to further trade and cultural relations between the people of that province and the people of the State of Maryland.

As we in Maryland and the nation as a whole broaden relations with the People's Republic of China, it should be noted that the United States will continue to maintain existing cultural, commercial and other relations with the Taiwanese government and that the people of Taiwan will continue to enjoy the hospitality and good wishes of the State of Maryland. I am also confident that through various kinds of exchanges with Taiwan, the people of both governments will find mutual benefit and growth.

I trust that your workshop will prove both stimulating and fruitful and that you will return to your usual activities with the understanding of this complex issue. My best wishes to each of you.

Sincerely,

Harry Hughes
Governor

INTRODUCTION

The establishment of diplomatic relations between the United States and the People's Republic of China on January 1, 1979 launched the long-awaited normalization process originally undertaken as part of the Shanghai Communiqué of 1972.* As in the case of the effort in 1972 to improve the U.S.-Soviet relationship under the détente formula, the White House announcement on December 15, 1978, that recognition was to be extended and diplomatic relations established, evoked a variety of responses.

Moscow was restrained and guarded in its accommodation to the changed situation, aided by the assurances contained in the Joint Communiqué of December 15, 1978, that one of the underlying principles of the new relationship would be avoidance of "agreements or understandings . . . directed at other states." The reaction in Taiwan was understandably negative given the abruptness of the announcement concerning normalization and its implications for the U.S.-Republic of China relationship, including termination of the Mutual Defense Treaty. The predictability of these reactions was matched by those in the United States which ranged from dismay over the "sell-out" of Taiwan to satisfaction that the "China card" had at last been played as the long-awaited "equalizer" in the increasingly competitive U.S.-Soviet relationship. Support for normalization was also voiced by those who believed that it was long overdue and would open up new, profitable trading horizons through participation in the Chinese drive for modernization. Faced with opposition by the "China lobby," the Carter administration understandably encouraged positive assessment of the normalization decision.

American optimism and excitement over the new beginning tended to raise expectations concerning the benefits of normalization. The mood generally approximated that which followed the announcement in 1972 of détente in the U.S.-Soviet relationship — a mood which approached euphoria as the Nixon administration oversold the benefits of the move away from confrontation and toward cooperation.

Two developments at the outset of normalization with the People's Republic, however, dampened the nascent enthusiasm and tended to put the relationship in a more realistic perspective. The January 1979 visit to the United States of Vice Premier Deng Xiaoping and his insistence on linking the United States to his anti-Soviet, anti-hegemony position, followed by the "punitive" campaign against Vietnam, raised real questions concerning who had played what card. To many it seemed that the benefits of using

* For an excellent selection of the documents relevant to developments in the U.S.-P.R.C. relationship, see H. CHIU, *CHINA AND THE TAIWAN ISSUE* 212-75 (1979).

triangular diplomacy in handling relations with Moscow and Peking were being overshadowed by the exposure to involvement in the hostility and rivalry of the Sino-Soviet split. The "China card" proved to have a cutting edge of its own.

The second development related to the potential economic benefit to the United States of the trading relationship, a prominent aspect of normalization. After a flurry of eye-catching commercial negotiations and deal-making, the tempo of Chinese economic activity appreciably slowed, a reflection of the reality of the modernization capability. The result was a sobering of the attitude towards the economic benefits of normalization.

In many respects normalization has tended to follow the pattern of the détente relationship with the Soviet Union.** It has the familiar trade and cooperative aspects, including a science and technology program agreed during the visit of Vice Premier Deng. There is no present arms control aspect, although one can foresee potential involvement here as the P.R.C., a member of the nuclear club, is not a party to the Limited Test Ban Treaty. The competitive aspect of the relationship is not the same, across-the-board rivalry as in the U.S.-Soviet interface. There is, however, latent competition and conflicting policy interests in the Far East, including the Taiwan question which has been finessed in the present effort to nurture and develop the relationship. Thus, many of the issues related to U.S.-Soviet détente arise in the normalization context.

The Law Professor Workshop at the University of Maryland focused on the key aspects of normalization and the related process. [Workshop Program is appended.] Intended to enrich instruction in our law schools, it represented an effort to provide insight into the political and legal issues generated by a significant, contemporary U.S. foreign policy development. Specifically, the Workshop was structured to cover the international relations and international and domestic legal aspects of normalization of the U.S.-P.R.C. relationship.

To understand the importance attached by the United States to normalization, it was necessary to present the official perception of the benefits or value analysis. Moreover, because normalization impacts other relationships, the program necessarily included coverage of Pacific and Triangular Diplomacy, the Taiwan Issue and some of the lessons of history for the future of those relationships. As negotiation is critical to any relationship, attention had to be paid to what experience shows about dealing with the P.R.C. and the stability of its internal process for implementing the results negotiated. The internal legal order is also important because of its relevance to such specific aspects of normalization as trade and scientific and

** *Détente*, AM. BAR A. (1977).

technical exchanges and, of course, the Carter administration's special focus on human rights. Domestic legal considerations related to normalization also arise on the U.S. side from such issues as the authority of the Executive Branch to act without the Congress in terminating the Mutual Defense Treaty with Taiwan; the creation of a nongovernmental institutional framework for the U.S.-Taiwan relationship; and Most Favored Nation, credit entitlement, export control and other trade-related matters. In short, the Workshop attempted to familiarize the participants with the broad range of substantive and procedural issues involved in normalization. Its real significance is that it provided a forum for distinguished specialists to lead the discussion of those issues so soon after the event itself.

Bernard A. Ramundo
Moderator
Law Professor Workshop

CHAPTER I.

HISTORICAL PERSPECTIVE— THE PAST AND FUTURE OF U.S. RELATIONS WITH CHINA AND THE USSR

*Donald W. Treadgold**

Let us begin with a Yugoslavian story. It seems that Carter and Brezhnev fall into a heated ideological disagreement at their Vienna summit, and both have heart attacks which apparently render them moribund. Teams of doctors, however, are put to work reviving them, and they eventually succeed — but only after a hundred years have passed. They reawaken simultaneously, and the first thing they hear is a radio news broadcast. The first item begins, "The President of the United States and the First Secretary of the U.S. Communist Party" Brezhnev shouts, "See, I told you so!" The second item begins: "Serious disturbances are reported on the Chinese-Finnish border." Carter shouts, "See, I told you so!" The third item begins: "President Tito, on his 187th birthday, has received a Yugoslav youth delegation." (Remember, it is a Yugoslavian story.) That anecdote does not really relate what the future will be like, for Tito will not live to be 187 years old.

Since particular legal, diplomatic and commercial problems will be explored by later speakers, this paper will attempt to analyze some of the broad underlying motives and aims of Americans. I use the term "Americans" generally, because many of the most important U.S. involvements with Russia and China, especially with China, were not governmental at all. I shall conclude by offering a few warnings for the future. I give here more attention to China than to Russia, because the Chinese connection is the new — or more precisely, the recently — one and therefore, the active ingredient of the mix.

United States relations with Russia and China began at a time when Great Britain ruled the seas. Although Britain had just lost the American colonies, it was about to succeed in building itself a new empire which would bring it close to domination of the world. This domination was generally benevolent, disturbing very little the indigenous institutions of the colonized country. Many aspects of American relations with Russia, China and other countries in distant continents were determined by the actions and reactions of the British. Nevertheless, the United States found itself gradually preparing to assume its dominant role in world affairs during the mid-twentieth century.

* Chairman of the Department of History, University of Washington; President of the American Association for Advancement of Slavic Studies.

The first American envoy was sent to Russia as result of a Congressional resolution passed in 1780. That envoy, Francis Dana, served in a strictly unofficial capacity; he was a young man who took with him someone younger still, John Quincy Adams, who was to return in 1809 to become the first U.S. minister in St. Petersburg. Alexander I and Thomas Jefferson exchanged a pleasantly distant correspondence. In those years, the Russians were obtaining a foothold in Alaska and they established a settlement known as Fort Ross, short for "Rossiia," near San Francisco. The possibility that the Russians would annex and colonize the West Coast never materialized. A trade treaty was signed in 1832, but had little effect; Russia seemed far away, as did "Russian America," to the still Atlantic-oriented United States. During the Civil War, Russian squadrons called at northern ports, mainly as a way of tweaking the nose of the British lion which was showing some sympathy for the South. These naval visits helped create the atmosphere in which Alaska was sold to the United States in 1867 for a paltry \$7 million which many then regarded as a grossly excessive sum.

In the nineteenth century, American-Russian relations followed a generally uneventful course. Many Russian radicals and liberals admired U.S. society and government or aspects thereof; several Americans sympathized with Russian opposition to autocracy and deprecated its rigors and repressive qualities. Such men included Andrew Dickson White, U.S. minister and future president of Cornell University, and George Kennan, a distant relation of our contemporary of the same name and author of a book entitled *Siberia and the Exile System* which had a sizable impact on American opinion. But other U.S. diplomats were seldom so gifted and knowledgeable. A striking example was David Francis, our ambassador in 1917, the year in which the last tsar was overthrown and the Provisional Government came to nominal power. Shortly after Lenin returned to Russia, Francis sent Washington a cable: "Extreme socialist or anarchist named Lenin making violent speeches and thereby strengthening government; designedly giving him leeway and will deport opportunely." The deportation, needless to say, was not forthcoming.

The February Revolution and the coming of democratic government, though it proved abortive to Russia, did have an important effect on the circumstances in which the United States entered World War I. Now all the major European allies against Germany — Britain, France and Russia — were ostensibly committed to Wilsonian ideas or slogans. But the world was *not* made safe for democracy, nor was Russia. The Russian Civil War followed, accompanied by an Allied intervention in which no U.S. troops fought and in which American motives were far from unambiguously anti-Bolshevik. From such agonies emerged the Soviet regime.

It was not until well after Britain and France had accorded the USSR formal recognition that the United States followed suit. The United States was not always well served by its envoys: Ambassador Joseph E. Davies, for example, thought Stalin's purge trials were justified. During World War II, many Americans tried to paint their Soviet ally democratic, but after 1944-45 Stalin all but destroyed this picture. The story of the so-called "cold war" and new beginnings of *détente* with Nixon after 1972 need not be retold here.

To summarize, in the 1920s and 30s, a few Americans believed, or at least hoped, that the Soviets were building a new earthly paradise; Lincoln Steffens, for example, reported somewhat prematurely, "I have seen the future and it works." A larger number hoped, more modestly, that the United States could cooperate effectively with Stalin against Hitler. In order to believe that such cooperation was realized, one must overlook the Nazi-Soviet Pact which enabled Hitler to begin World War II and the ways in which American aid was concealed by the Soviet government from its own people. The appearance of genuine American revolutionaries in the 1960s came when there had been exposure of Stalin's misdeeds by Khrushchev and others to dim the luster of the USSR for leftists. For many of them, China replaced Russia as the land of idealist dreams. Nixon, Ford and Kissinger may or may not have been wise in their dealings with the Soviet Union, but certainly they were under no romantic illusions about the Soviets. Even the Carter administration has refused to be deceived although some hold that it has been inept in its management of Soviet affairs.

United States relations with China followed a quite different course. China was markedly different from Russia which represented a strange breed of Europeans, and the few Russians who reached the United States were not easily identifiable in the American polyglot of the nineteenth century. But from the time the first Chinese immigrants arrived in California about 1850, they seemed, at worst, a dirty and incomprehensible lot. At best, they seemed hard-working yet difficult to understand and easy to spot among masses of whites. American attitudes always mixed contempt with affection, even love, for China. For instance, the first university chair in Chinese in this country was established in 1901 after a retired general hit his Chinese butler over the head in a fit of rage. Regretting his actions afterward, the general endowed the Dean Lung (the butler's name) Professorship at Columbia University.

The first Americans touched Chinese soil in 1784 when the ship *Empress of China* visited Canton, beginning a long history of trade with China. Such trade was responsible for the creation of several New England commercial dynasties. To be sure, there were always some exaggerated expectations, both before and after the first U.S.-China treaty was concluded by Caleb Cushing in 1843. Some believed that a salesman could become a John D. Rockefeller

overnight if every Chinese would buy from America one ounce of wheat or one shirt per year, or even if every shirt bought by a Chinese was to be lengthened by one inch (a serious calculation of a half century ago). Such expectations were never realized and will not be in the foreseeable future. But realistic businessmen found buying and selling on a modest scale profitable.

Influential Americans aimed at three successive but overlapping forms of change for China — envisaging Christianization, the introduction of democracy and the establishment of socialism. The first U.S. missionaries to arrive in China were Elijah Bridgman and David Abeel in 1830. As were most American missionaries throughout the nineteenth century, they were Protestants of the fundamentalist variety. Most of them were ill-equipped for the task of conversion, knew little of China or the Chinese language, and hated Chinese culture. One described the street chapel through which most missionaries tried to work as "the missionary's fort, where he throws hot shot and shell into the enemy's camp" Another wrote that "the invention of the Chinese language has been ascribed to the devil, who endeavored by it to prevent [the triumph of Christianity]." (This is a view which Western students of the language to this day may find seductive, but it is one they try to resist.) During the forty years ending in 1914, it was reported that 17 million Chinese Bibles or Testaments had been distributed. The literate Chinese, into whose hands these religious materials fell, found they could neither understand them, since pietist dogma excluded any notes or comment, nor sell them. The result was that such items were worthless. Here we can only mention in passing the Taiping Rebellion. The rebels were composed of a Christian sect owing their professed ideology almost entirely to Anglo-Saxon missionaries. The leaders were, however, too crude (like most of the missionaries of the time) and maladroit to conciliate the Western powers and the Chinese scholar-gentry, whose neutrality, at the very least, was needed in order to sustain the rebellion.

Just before 1900, the fundamentalist Protestants were replaced by modernists in both the United States and China. In their hands, Christian conversion and the introduction of democracy came to be equated with each other. Sun Yat-sen, the first president of the Chinese Republic, was a Christian modernist. Beginning with William Howard Taft and Woodrow Wilson, American presidents called for the conversion of China to Christianity and the export of American-style democratic institutions to the former Celestial Empire. Shortly thereafter, however, there appeared Americans who were ardent democrats but who were not Christians. Notable among them was John Dewey, whose Chinese disciple Hu Shih wanted a China modeled after the United States but who was also sensible enough to realize that the transformation could not come overnight. On the American side,

these expectations helped set the stage for the image of China projected in Pearl Buck's novel *The Good Earth* and the 1937 film based on it. The hopes of Americans rather than the cold Chinese reality were conveyed to the 23 million Americans who saw the film (not to mention nearly 50 million others outside China).

In the 1920s came the return of the American missionaries' beloved Sun Yat-sen, and after his death, Chiang Kai-shek, emerged as leader of the Kuomintang. It seemed that a democratic China was at hand; at any rate, the Kuomintang leaders had to promise democracy in order to be given a place among the peacemakers of World War II. The possibility that such a promise was not in the power of any Chinese to make, given China's institutional heritage at that point, never seemed to concern Americans.

By this time, the U.S. government had given up hopes for Christianization but was still exploring the possibility of democratization. Other Americans were, however, sensing that something had gone wrong. In the 1930s and 40s, a new anthropological relativism suggested that each culture had gone, and ought to go, its own way; America should not prescribe formulas for others. As for the Chinese intellectuals who would either plan their country's destiny or rationalize its realities, many of them had rejected Christianity and were abandoning liberal and democratic ideas for Marxism-Leninism. That doctrine, or variants thereof, became popular in many Chinese intellectual circles outside of the area where the Chinese Communists, almost smashed by Chiang, had found refuge around Yen-an. Some Americans, such as General Stilwell, tried during World War II to browbeat the Chinese into doing things "the American way," but experienced only frustration and disillusionment. By now Edgar Snow, a few missionaries and a number of secular writers began to tell the American public about the new tidy, orderly and efficient China being built by Communists who were basically only agrarian reformers.

Wilson had urged democracy as the guiding principle of the future. Franklin D. Roosevelt announced the four freedoms, the truly operative ones being anti-imperialism, decolonization and national independence. Lyndon B. Johnson selected free elections to emphasize. The Carter administration had deemphasized free elections (except for Rhodesia), and instead has chosen to stress another part of the democratic vision — "human rights." These rights are expected to be enjoyed to some degree by all regimes, though why that fragment of democracy was emphasized, rather than any other, remains a mystery.

Chinese Communism has not been well understood in this country. I know influential people today who are both very conservative and very anti-Soviet, who do not think Chinese Communism is really Communism at all, and who seemed to expect that democracy would be introduced to the

mainland by virtue of the covering of a single wall with big-character posters. Nixon, Kissinger and others knew better. It is impossible, however, to refrain from noting that if, in the last two decades, any top policy-maker in Washington has understood East Asia, and has been prepared to deal with Chinese, Japanese, Koreans, Vietnamese and others with the requisite sensitivity (regardless of the substance of the policy concerned), such person's existence has remained well concealed. The quite unnecessary shocks administered by two presidents to our friends in Japan and Taiwan, respectively, are only the most obvious examples.

With this as background, I would like to make my last and most important point. Americans in a position to shape the country's official and unofficial actions have had an unilinear view of human development even though the world's actual history has been multilinear. In relation to the area we have discussed, the profound institutional differences — leaving aside for the moment the cultural differences — between the West and the continental Orient have been largely ignored. In Japan (*not* on the continent), U.S. occupation was apparently successful in accomplishing miracles. The major reason for such success lay, to a large extent, in Japan's feudal or semi-feudal history, which provided the necessary prerequisites for Japanese capitalism and democracy today. It was not because General MacArthur was a near-perfect Shogun (though he indeed was). In contrast, the lack of developed institutions of private property, law and structured or hereditary personal relationships in continental East, South and West Asia and Africa presents formidable obstacles to the immediate reproduction of Western societal patterns. Thus, the problem can be traced to thousands of years of history and not to some recent mistake of a U.S. or Asian/African policy-maker. Such tradition might be uprooted eventually by determined social engineering — though, as of yet, I know of no one who is capable of conducting it — or, perhaps, by a process of gradual evolution; it will not be corrected by a few sermons from the White House. In the Orient, instant democracy is impossible. Instant Communism is possible, however, because it adapts the traditional institutions of despotism to new, updated political and economic slogans and technological innovations. What the foregoing proposition may mean for the future of the United States is a question which cannot be explored here, though the obvious conclusions to be drawn are scarcely those which justify much optimism.

The United States must have relations of some kind with both the USSR and the People's Republic of China (P.R.C.). Some might think that 17 million people, an economic growth rate upward of ten percent, and a degree of freedom might also entitle Taiwan, not to mention Hong Kong, Macao and Singapore, to some attention. In these areas the Chinese are living far better lives than in the P.R.C. But with the two great mainland powers, some kind

of diplomatic, commercial and even cultural contacts may be possible and desirable. They are best undertaken without illusions and with the maximum possible understanding of the past limits and the alternatives of the future, avoiding the raising of impossible hopes whose certainty of being dashed will produce only despair. America enjoys much admiration, envy and even trust (despite all we have recently done to dissipate that) abroad. We have stumbled before, but each time we have risen to our feet, a capacity we all hope will be preserved and carried into the next century, at least.

CHAPTER II.

NORMALIZATION AND PACIFIC AND TRIANGULAR DIPLOMACY

*Gaston J. Sigur**

In discussing Pacific and triangular diplomacy in mid-1979, the present period must be placed in historical perspective. After the communist victory in China in 1949, Mao Tse-tung signed a treaty of alliance with Joseph Stalin. In military terms, this treaty was directed against a rebirth of Japanese militarism and those allied with it, *i.e.*, the United States. For its part, the United States negotiated a security pact with Japan which brought the two former enemies into a close cooperative relationship.¹

Now, almost thirty years later, the Soviet Union and the People's Republic of China (P.R.C.) are in a state of confrontation. Soviet and Chinese propaganda organs severely attack each other. The Soviet Union maintains large and menacing military forces along the Chinese border. Only a couple of months ago, the Chinese officially notified the USSR that they would allow the treaty of alliance signed in 1950 to lapse.

The development of the U.S.-Japanese security arrangement has been quite a different matter. A somewhat limited and narrow security pact has become the foundation of a broad and deep alliance structure. The foreign policies of both the United States and Japan in the Asian and Pacific regions are based upon the economic, political and security ties that bind the two countries into as firm a relationship as major nation-states have ever had in the modern world.

With the communist states in disarray and indeed, at one another's throats, and with the U.S.-Japan alliance still flourishing, despite serious economic differences (as Prime Minister Ohira's May, 1979 visit to Washington showed), one might assume that all is well in the Pacific and East Asia and that the United States can rest with its Japan connection as the cornerstone of its policy. The United States, however, has little to be complacent about and should instead be concerned about recent developments, possible trends and potential explosions.

The United States faces, in part, difficulties of its own making. Premier Lee Kuan Yew of Singapore was quoted in the *Asian Wall Street Journal* of February 24, 1979 as having said the following:

* Professor of International Affairs and Director of Institute for Sino-Soviet Studies. George Washington University; Specialist in Asian and Pacific Affairs.

1. Security Treaty, [1951] 3 U.S.T. 3329, T.I.A.S. No. 2491.

In the East-West contest, the apparent American inability to influence great events and anticipate grave crises gives people [in the Pacific] the impression of aimlessness. The cumulative effect of instances of apparent American loss of control in the direction of events leads her friends to pessimism and her enemies to adventurism.

These comments of Premier Lee go to the very heart of one of the most troubling aspects of international affairs today — the perception of the United States, one of the two great world powers, as vacillating, indecisive and uninformed, with an inadequate global strategic plan. Events in recent years, including the U.S. defeat in Indochina, the plan for removal of U.S. ground forces from Korea and the seeming impotence of the United States to protect its interests in the Persian Gulf area, have tended to give this perception of American helplessness.

The manner in which the United States negotiated and agreed to diplomatic normalization with the P.R.C. led to further questions about American credibility. While very few, if any, world leaders opposed the U.S. establishment of formal relations with Peking, the view of many was expressed by the Philippine Secretary of Foreign Affairs, Carlos Romulo. General Romulo implied that while U.S. diplomatic recognition of the P.R.C. was inevitable, American guarantees to its allies in Asia and elsewhere were in serious jeopardy as a result. In other words, it was not the final goal which was questioned, but rather the way in which it was reached and the concessions made to reach it.

The United States is a superpower whose every action is watched and carefully monitored by all other nations. While many people in the United States have been obsessed with the limitations of power, American leaders must spend more time considering the responsibilities of power. As a global power, the United States must be concerned with what happens in our world, in particular that which might alter the rather precarious existing balance of power. When the United States does something or does not do something in one part of the world, repercussions may occur in places far removed from the area of action. This is not to say that the United States should be the world's policeman. President Carter and his chief foreign policy advisors have exerted too much effort in denying such a role for our country. The United States has never served as a policeman for the world, but the wiser and more strategic minded of our leaders know that responsibility of a global nature cannot be avoided by the world's greatest power.

The United States should use its power carefully, cautiously and in ways that enhance its negotiating position, in particular with the Soviet Union and the P.R.C. If we exhibit weakness in attempting to reach agreements on economic, political or security matters with either of the two great communist

nations, it will only lead to intransigence on their parts, to confusion as to what U.S. objectives really are, and to misjudgment as to U.S. capacity and willingness to stand by its friends and allies. The steadfastness and reliability of the United States becomes ever more critical given steady Soviet military buildup, in both conventional and strategic terms.

The Soviet Union is now a global power and thinks, more and more, in global terms. This holds true in both the balance of power sense and ideologically. Soviet diplomats see the tie between policy actions taken toward Japan and China, for instance, and action taken in Europe or Africa. The Soviet Union does not forget that the chief protagonist on the world stage is the United States. One high-ranking Soviet official said to me some time ago that the Soviet Union is not worried about China by itself, but rather a China backed and supported by the United States. This statement reveals the priorities of Soviet foreign policy.

The primary Soviet foreign policy objective in Asia today is the containment of China. The implementation of this policy can take many forms, including the use of military force and certainly, the threat of such force. It also means that the Soviet Union will do everything in its power to forestall the formation of a U.S.-Japan-China entente. Conversely, it may lead the Soviet Union to seek some kind of accommodation with China on the issues that deeply divide them.

The Soviet Union maintains its military pressure on China today. As has been said, Soviet armies are poised on China's borders with conventional and nuclear weapons. The Soviet Union has sent massive amounts of modern war material to Vietnam, following the Chinese attack on Vietnam earlier in 1979. Additionally, the Soviet Union has warned China that any further military action against the Hanoi regime risks the danger of Soviet retaliation against China. This support would be given in accordance with terms of the Soviet-Vietnam Treaty of Alliance signed in November, 1978,² just prior to the Vietnamese invasion of Cambodia.

The Chinese have been remarkably successful up to now in their dealings with Japan and the United States. In the summer of 1978, Tokyo and Peking signed a Treaty of Peace and Friendship³ and in October of the same year Teng Hsiao-ping travelled to Japan for the exchange of ratifica-

2. Treaty of Friendship and Cooperation, Nov. 3, 1978, Soviet Union-Vietnam, INT'L LEGAL MATS. 1485 (1978). Article 6 of this treaty states that "[i]n case either party is attacked or threatened with attack, the two parties signatory to the treaty shall . . . take appropriate and effective measures to safeguard peace and the security of the two countries." *Id.* at 1487.

3. Treaty of Peace and Friendship, Aug. 12, 1978, China-Japan, 17 INT'L LEGAL MATS. 1054 (1978).

tion. The Treaty contained the anti-hegemony clause insisted upon by Peking, but vehemently opposed by Moscow.⁴

During the initial euphoria brought on by the signing of the treaty, Japanese commentators dwelled on the common cultural heritage of the two countries and of the complimentary nature of their economies. The Chinese put aside the enmities of the recent past and spoke of the years of friendship to come. A wave of good feeling seemed to have swept over both countries. Japanese businessmen dreamed of a never-saturated Chinese market and of eternal profits. The Chinese were more restrained and exhibited increasing caution during 1979 in making deals with Japan's multinational companies for technological assistance. The question of how China is to pay for such assistance is obviously a major one.

While China clearly needs Japan's help immediately, China's leaders are probably thinking in longer terms about Sino-Japanese ties. China's alliance with the Soviet Union went sour for a number of reasons, the most important reason being the subservient role that China had to play in relation to the status of the USSR as a superpower. While unequal at present, the Japanese-Chinese relationship is more equal than that between the USSR and China in the 1950s and more equal than that between the United States and China can ever be. In the future, China and Japan could develop a kind of partnership, with China providing the military strength and Japan the economic assistance. Eventually, China would become the "senior partner" or "elder brother." This is not necessarily a realistic assessment of what may develop between China and Japan, but rather an assessment of what China's leaders may be contemplating.

In the case of the United States, China not only envisages more American contributions to her modernization programs, but also sees the United States as a counterweight to the Soviet Union. China needs American friendship in order to bolster her own safety vis-à-vis the USSR, as well as to assist her in efforts to strengthen relations with America's allies. The United States is indispensable to China if China's current foreign and domestic policies are to prosper and mature.

Since the late 1950s, Sino-Soviet relations have deteriorated. China has accused the Soviet Union of territorial imperialism against China's borders, or seeking hegemony in the Pacific and Asian region, and of revisionism as regards Marxist-Leninist doctrine. Certainly, China bridled in the decade of the 1950s at playing second fiddle to the Soviet Union in the communist

4. The Japanese received a concession from Peking, however, by insisting on a provision stating that the treaty does not affect the relations of either contracting party with third countries.

world, and indeed, globally, and at being denied nuclear secrets and nuclear wherewithal by the Soviets.

Sino-Soviet rivalry has assumed many forms and shapes over the past twenty years, indicating how pronounced and dangerous the struggle within the communist world has been. In the military area, China has developed a nuclear bomb capability not nearly equaling the Soviets', but certainly sufficient to severely damage a number of Soviet cities. Chinese conventional armaments leave much to be desired, but population may count for something and China certainly far outscores the Soviet Union in that department. There have been skirmishes along the long border between the USSR and China, with casualties fairly heavy in some encounters. In third world areas, China and the Soviet Union have tried to outdo one another in wooing the hearts and allegiance of both revolutionaries and more moderate leaders.

China has spent considerable time and money to keep North Korea closely by her side. Both Chairman Hua and Vice Premier Teng have visited Pyongyang in past months and China recognizes Kim Il-sung's government as the only legitimate one on the Korean peninsula. Kim Il-sung has responded to Chinese efforts with warmth and support, but he has been careful not to go too far in his backing of the various Chinese postures adopted against the Soviet Union. Nonetheless, it seems clear that his sympathies lie with Peking.

The most salient feature of Soviet foreign policy everywhere on the globe is its reliance upon military power. This is especially true in Asia, where Soviet political and economic strength is transparently weak. Perhaps this explains, in part at least, Soviet policy toward Japan. Western observers have great trouble in understanding why the USSR assumes such a blustering and belligerent tone in its dealings with the Japanese. The explanation may be that since Japan is so closely allied to the United States, Moscow cannot challenge this alliance with any hope of success. Therefore, the only way to present a credible Soviet policy to Japan is to flex Soviet military muscles on the chance that Japanese leaders will become sufficiently intimidated to respond favorably to Soviet initiatives in the economic and political realms.

The build-up of the Soviet Pacific fleet which continues at a rapid pace contributes greatly to Japan's concern about its security. In recent months, the Soviet Union has increased its military forces on the Northern Islands that Japan claims as Japanese territory. Soviet use of former U.S. military bases at Cam Ranh Bay and Danang in Vietnam have led to protestations from top officials in Tokyo. There are, however, indications that the Japanese would like to halt the downward spiral of Soviet-Japanese relations. Nevertheless, the Northern Islands issue remains the major sticking point and so far, the Soviets have not taken into consideration Japanese sensitivities and national pride in their foreign policy actions.

Moscow keeps correct, but relatively cool, ties with North Korea. The Pyongyang regime's affinity towards China does not sit well with the USSR. The Soviet Union, however, remains the chief supplier of armaments to the North Koreans and provides economic assistance to the Korean communist regime. Recently, the Soviets have increased their unofficial contacts with South Korea, but Moscow still holds to the position that there is but one legal government on the Korean peninsula and that is the one headed by Kim Il-sung.

In the past two or three years, the P.R.C. has adopted a highly active foreign policy. This has entailed a strong and virulent anti-Soviet propaganda campaign, a move toward better relations with the United States and Japan in particular, and the industrialized world in general, and efforts to play upon the discord among communist states. This latter element has led to visits by Chairman Hua Kuo-feng to Yugoslavia and Rumania.

The Chinese leadership, represented most forcefully by Vice Premier Teng Hsiao-ping, has stated in bold terms that it intends to modernize China during this century. The so-called four modernizations—modernization of agriculture, industry, science and technology, and the armed forces—have become the central theme of Chinese domestic policy. In the international sphere, this means that China must have the support of the great industrial powers if she is to even begin to accomplish the goals she has set for herself.

With Vietnam, however, China has moved, or has been moved, into a policy of military confrontation. Chinese support to North Vietnam in its war against the South was heavy and continuous. In fact, in the latter period of the Vietnam War, China provided more assistance to Hanoi than did the Soviet Union. It was not long after the war ended, however, that an estrangement began to develop between China and Vietnam. This estrangement became more and more pronounced in succeeding months and years. The historical antagonisms between the two peoples which were relatively dormant during the Vietnam War years began to reappear. The Vietnamese were particularly disturbed—externally, about Chinese support of the Pol Pot regime in Cambodia and internally, about the monopoly of wealth in the southern Vietnam area by overseas Chinese. Most importantly, however, China and Vietnam are in a contest for influence and power, especially in the Indochina region and in Southeast Asia as a whole. Additionally, the Chinese refer to the Vietnamese as the Cubans of Asia, *i.e.*, surrogates for Soviet imperialism.

The deterioration of relations between Hanoi and Peking accelerated during 1978 and following the Vietnamese invasion of Cambodia in December of that year, some punitive action by China against Vietnam became likely. Following Teng Hsiao-ping's visit to the United States, Chinese forces moved in February, 1979, as Teng said, "[in order] to teach

Vietnam a lesson." The Chinese attack was limited in scope and confined to the Vietnamese-Chinese border region. Little more could have been done without risking major Soviet intervention. The Chinese calculated well the limits of Soviet restraint.

At present, China and Vietnam are in a state of uneasy peace. Peace negotiations began in Hanoi following the Chinese withdrawal of its forces from Vietnamese territory (all or most, depending upon which version of the withdrawal one accepts, Peking's or Hanoi's), but the struggle between the two communist powers, with the Soviet Union staunchly supporting Vietnam, goes on. Resistance to Vietnamese armies in Cambodia is not yet over and Laos could explode at any time. It would seem that this is the first chapter of armed struggle in the Indochina peninsula.

While the Vietnamese are a fiercely independent people who will not willingly give up their independence of action, they are presently reliant, to some degree, on the Soviet Union. This reliance involves the importation of Soviet weaponry and technical assistance and most importantly, Soviet assurances that Moscow will act if Peking goes too far against Hanoi in military terms. For China, the attitude and potential actions of the Soviet Union are central to her own plans and policies. Peking must exercise the most critical judgment in this regard, for the success or failure of her efforts in Southeast Asia may rest upon it.

While it is most likely that the Soviet-Chinese confrontation will go on ebbing and flowing over the course of time, a possible agreement between these two great communist powers cannot be ruled out. One may assume, in fact, that there are leadership elements in both countries which are desirous, at the very least, of some easing of tension in Sino-Soviet relations. This could mean some minor territorial adjustments and an agreement to disagree over ideological and hegemonic issues. In the long run, a more comprehensive settlement of differences could be embraced.

The conflicts within the communist bloc are one set of dangers to peace and stability. Another, not totally unrelated, exists in the Korean peninsula. On both sides of the 38th parallel, large and modern conventional military forces are amassed. These forces, especially those in North Korea, are in a state of readiness. A danger of conflict breaking out between North and South Korea constantly exists.

The economic disparity between the two Koreas is a matter of concern. In the south, the Republic of Korea has accomplished almost a miracle of economic progress. This is a testament not only to capable leadership in economic development and to the hard work of the South Korean people, but also to the free enterprise system. This strong economic base can be used to support an increasingly independent military capability by South Korea in the years ahead. As Kim Il-sung and his associates look into the future, they

can only see a more powerful Republic of Korea relative to their own strength. A time of uncertainty as to North Korean intentions toward the South is in evidence now and will continue to be for some time to come. While it is improbable that either China or the Soviet Union would counsel in favor of an attack by Pyongyang against Seoul, it is not out of the question that Kim Il-sung may think "either now or never" and act unilaterally. This would become a stronger possibility if U.S. ground forces were totally withdrawn from the Republic of Korea.

What we see, therefore, in the Pacific and East Asian regions today is an area with potential for military outbreaks, of various dimensions, at several key spots. Given these uncertainties and dangers, the United States must pursue a policy of maintaining—and if necessary, building her military strength in the region—if she is to fulfill the objective of doing everything possible to preserve peace and stability in the area. But unilateral military might is not sufficient and should be coupled with the closest relationship with Japan in economic, political and security terms. If the United States recognizes the responsibilities of power and keeps the U.S.-Japanese alliance as the cornerstone of U.S. policy, then the dangers of conflict will recede in Asia and the Pacific and the opportunities for peaceful settlement of differences will grow.

How has the U.S.-Japan alliance operated in practice? On the economic side, the United States and Japan have both greatly contributed to the development of the free nations in East Asia. Korea owes much to Japanese and American investment, bank loans and other economic ties. Additionally, both the United States and Japan have made the financial commitments to the Asian Development Bank which have done so much to spur Korean development.

The United States and Japan have granted diplomatic recognition to the P.R.C., but have retained close economic and cultural ties with Taiwan. In the case of the United States, the government, thanks to Congressional action, has also emphasized that the United States would view with grave concern any attempt by the Peking government to forcibly bring Taiwan under its control.

While Chinese designs and Vietnamese plans (with Soviet backing) are in the forefront of today's thinking on Southeast Asia, there is a stabilizing force in the area which hopefully will grow and become more influential in the future—the Association of Southeast Asian Nations (ASEAN). ASEAN has confined itself mainly to economic and political issues and has not yet concerned itself with matters of military security. If Premier Lee Kuan Yew of

Singapore has his way, however, a military-type alliance might yet emerge from the ASEAN relationship. However it develops, ASEAN is assured of strong U.S. and Japanese support.

As the United States works in tandem with Japan in providing aid and support to non-communist states in Asia, it must, at the same time, seek to reach agreements with both the Soviet Union and China. To reach agreements with Moscow and Peking is not easy, but one thing is sure — there can be no successful agreements if the United States does not negotiate from a position of strength.

Also, the United States should not try to play off one great communist nation against the other. If the United States does try, it may find that it is the one played. The United States, after all, has legitimate and pressing reasons for wanting better relations with both Moscow and Peking, but it does not want to join with one against the other. The United States already has major allies and there is no reason to shift from them. The U.S.-Japanese alliance in Asia, bolstered by the North Atlantic Treaty Organization (NATO) in Europe, are, so far, the only effective means devised by the United States to cope with problems of war and peace in the world. New relations with either the USSR or with China cannot take the place of these proven instruments of safety and security.

CHAPTER III. THE TAIWAN ISSUE

*Richard L. Walker**

It is difficult to bring to the problem of China and Taiwan that detachment and balance usually associated with concepts of justice and a rule of law. In part, this is true because of Americans' romantic and emotional attachment to that great civilization. Since the White House has once again joined both Peking and Taipei in saying that there is but one China, and Taiwan is part of China, I believe we can expect some of the romanticism of China to wash off in our dealing with Taiwan.

With regard to the People's Republic of China (P.R.C.), its intensified relations with the Western world, and its policies and attitudes toward the Republic of China on Taiwan (R.O.C.), it is desirable to point out the fact that we Americans tend, and have tended for the last three decades, to attribute far more stability and continuity in projecting present policies into the future than has been warranted by the facts. There have been wide and frequent swings in Peking's attitudes, usually linked to internal power considerations. Thus on June 5, 1979, international news services reported from Peking that, once again, only officially authorized Chinese citizens would be allowed to speak to foreigners. This occurred after many reporters and scholars had been led to believe that the more liberal policies inaugurated earlier in the year would be the course for the remainder of the century and had written in glowing terms of China's move toward a more open society.

Again, it is worth pointing out that we have tended to postulate a unity for China and for its current leadership, a unity which is not only absent but which has now been shown to be false. If we know this was not so under Mao (and recent revelations are showing us how really deep were the fissures during his Stalin-like rule), how much more risky will be the projection of unity as a basis for evolving policies toward China in the years ahead, when a major generational transition is occurring? This will be particularly true as regards our policy towards Taiwan and our expectations of P.R.C. attitudes on the Taiwan issue.

With regard to both Taiwan and the P.R.C., there has been a general tendency in the United States to accept official plans and claims as reality. This stems, in part, from our romanticism about China and its people, but it is also a result of a general lack of verifiable information about social and political policies and developments. Time after time, we are proven wrong about China and we are misled by the projections of our own wishes and

* Director, Institute of International Studies and Professor of International Relations, University of South Carolina.

institutions onto the Chinese scene. When Chou En-lai made off-hand remarks about Chinese population, we could expect that American media would quote this as fact. Two scholarly and political camps in the United States tended to form emotional attachments to their own versions of a democratic and progressive China: one represented by the P.R.C., the other by Taiwan. All too often critical judgment was suspended even in the terminology used. Taiwan was called our "loyal democratic ally"; such terminology discouraged our reminding ourselves that those in charge in Taipei would look after their own interests, and that there was little likelihood that their loyalties were to America rather than to their own cause.

The "Carter Shock" of December 15, 1978 tended to obscure in the emotional language which followed some of the realities of the continuing Taiwan issue, its relationship to the whole evolving Pacific Basin, and the manner in which it is linked to American credibility in a whole range of functional areas involving our national future. The manner in which Carter handled this emotional issue only tended to exacerbate the problem in many respects and has led to recriminations and antagonisms between the executive and legislative branches, between the Department of State and the American business community, and within the ranks of the "China-watchers." The rudeness associated with its style raised questions as to whether the men in Washington had profited at all from past mistakes and failures to understand the importance of manners and ceremony in dealing with areas across the Pacific where style becomes substance.

In approaching our continuing Taiwan problem, it is perhaps worthwhile to mention just a few background facts, particularly since we are frequently misled into judging Taiwan's significance by contrasting its size and population with the overwhelming character of all of mainland China: for instance, seventeen and one-half million people as opposed to one billion; nineteen thousand square miles as opposed to more than three and one-half million square miles.

Taiwan represents today one of the most balanced and successful examples of economic and social development in the world. As a world economic actor, it surpasses all of mainland China and it is among the top ten trading partners of the United States. As a political entity it ranks among the top quarter of the countries in the world in population and economic activity. Growth in the past decade has been nothing short of phenomenal. Per capita income, which in 1969 stood at \$287, has increased to over \$1500 this year — where Japan was in 1969. Taiwan's world trade was \$1.7 billion in 1968; last year it totalled \$23.7 — where Japan stood in 1967. Much more impressive has been the general extension of the benefits of modernization and social improvement to the whole population. Linked with this is the fact that it has been done while the government has placed emphasis on the maintenance of

traditional Chinese culture and family life. Thus, the R.O.C. has been a much more serious contender as an alternative way of adjusting Chinese culture to the age of the computer, the transistor and atomic power than its relatively smaller population and size would indicate.

I would like to make five major points on the future of Taiwan and the P.R.C. and our relations with both of these political entities as we point toward the last two decades of this century. First, despite opinions from the White House that the integrity of Taiwan had been preserved, the security of the R.O.C., and especially its economic security, remains a very grave problem. Taiwan's very success makes it more vulnerable. In many respects, it is like Japan because it is so dependent on trade, free access to market and secure sea lanes. In Japan's case, however, there is no rival government hoping to strangle its success.

In its initial attempt to come to grips with the Chinese problem, the White House version of the Taiwan Relations Act¹ attempted to pretend that there really is no government on Taiwan and that the United States would deal with the people there only as individual citizens. The naiveté of this proposed piece of legislation was quickly exposed in the Congressional hearings, and the Americans were reminded that there is indeed still a government on Taiwan which exercises control and sovereignty over its territories, and that we are going to have to deal with it. This becomes for us an especially sensitive area of operation because of the contrast in the successes in Taiwan as compared with the failures in so many areas in the three decades of Communist rule of the P.R.C., failures now being revealed by the men in charge in Peking. There are many reasons, therefore, for us to remember that the Taiwan problem has not been solved. Competing Chinese regimes have not been eliminated from the Western Pacific. The military-security aspects of this competition will continue to worry us even after the security treaty expires.

Second, the Taiwan issue cannot be divorced from the whole regional structure of economic and military security in the Western Pacific. Though there are China advisers in the White House who wish that somehow Taiwan would disappear, this is unlikely to happen. Taiwan has been an intimate part of the development of the whole Western Pacific area which has accelerated over the past decade. It is linked into Telstar, Telex and computer nets; it is part of an interdependent trade pattern; it is bound up in the growth of modern tourism.

Because all of this development in the 1960s and 1970s is closely related to U.S. power, posture and credibility, the Taiwan problem cannot be

1. Pub. L. No. 96-8, 93 Stat. 14 (1979). See Appendix-Selected Documents p. 114 *infra*.

separated from other regional considerations. The Defense Treaty,² whose abrogation has raised sensitive internal political problems for Washington, was not an isolated one. Other defense commitments were bound to be called into question. Thus, the future and security of Taiwan have come to be linked intimately in the Western Pacific with, for instance, the security of Japan's sea lanes, Korean development and military security, and Philippine self-confidence. In addition, too many U.S. presidential and congressional guarantees were made to Taiwan to be dismissed with impunity. The sudden announcement on December 15, 1978 could not eliminate without serious repercussions this aspect of the reality of Taiwan. That was one of the messages which eventually Congress had to carry to an Executive branch which was caught up in America's China romance.

Third, this means that contrary to what has sometimes been so easily asserted by American supporters of President Carter's precipitate action on China policy, Taiwan is not comparable either in reality or as an issue to Hong Kong. While one of the new and very successful export-processing zones in the southern port city of Kaohsiung might be comparable to Hong Kong, there is no comparison in terms of the security and political question. On Taiwan, Asia's first republic retains traditions whose roots and history are hardly insignificant. The government on Taiwan still has the trappings of a sovereign state — a bureaucracy, a national educational system and the symbols of legitimate authority: army, courts, police and capacity to enforce laws. As pointed out, the R.O.C. constitutes a challenge to Peking and many of the claims advanced by the P.R.C.

Fourth, despite actions which seemed to take away American links to the R.O.C., Taiwan remains an American responsibility. It is linked with our businesses and other broad ranging activities. The American Chamber of Commerce in Taipei represents, for instance, more than 600 American firms in Taiwan. Much of the industrial growth in the island republic has been geared to American standards and spare parts; tens of thousands of its citizens have graduated from American colleges and universities; its legal and business practices are more and more synchronized with those of the United States. Thus, when it came time for the White House to pretend that we would have no dealings whatsoever with the governmental authorities — a move which the Carter Administration agreed upon without getting any sort of a *quid pro quo* — this was quickly revealed to be a position that was impossible to maintain. One of the American Chamber representatives, who came to Washington to testify in February, 1979, wondered what would happen with the many cases which would have to be adjudicated before the

2. [1955] 6 U.S.T. 433, T.I.A.S. No. 3178.

courts in Taiwan if we decided there was no government there whose authority could be acknowledged.

Perhaps a most important part of the continuing responsibility which the United States has for the future of Taiwan lies in these very commercial dealings and the personal contacts. They are, after all, the real stuff of international relations and the sustenance of international faith and credibility. That faith has also involved the tooling of the whole R.O.C. defense establishment to U.S. weapons systems. It is of little value to say that the people in Taiwan can take care of their own security without U.S. military contracts and supplies. This is why the secret deal between President Carter's negotiators and the P.R.C., revealed in the *Washington Post* on January 12, 1979 after the White House had assured the American public there had been no secret deals, proved so alarming to Congress. If the Administration was going to close off new weapons acquisitions while the security treaty was technically still in effect, how could the United States convince others that we would honor a commitment to supply defensive arms to the R.O.C. after the treaty, renounced unilaterally, had expired? The attempt to eliminate U.S. responsibility for the future of Taiwan cannot wash. The United States retains a responsibility for the future of Taiwan, and this fact has now been legislated into the Taiwan Relations Act which the President has signed. It will require a constant and intense vigilance to ensure that the intent of this act is not violated by the China romantics who would once again be tempted to give something away for nothing.

Fifth, in the final analysis, the Chinese in Taiwan and in the P.R.C. are better prepared to handle the current duality and fiction of the American Institute in Taiwan and the Coordination Council for North American Affairs than we are. The Chinese are used to clothing stark realities in the garb of different surface appearances. This is true of both Taiwan and the P.R.C. In Taiwan, for example, the fiction of a national government has been maintained to cloak the reality of the management of the state by a small but capable group of revolutionary modernizers from the Chinese mainland. In the P.R.C. all sorts of charades were played in the name of Mao Tse-tung and the most serious power struggles remained hidden under the smooth surface of unanimity. Or again, let us remember back through history that the duality of the period of Manchu rule in China (1644-1911) remained obscure to most Westerners. Chinese understand the necessity of fictions for maintaining face.

The real problem in Taiwan is to make sure that the reality of the U.S. undergirding of the island's security remains unimpaired, that the U.S. presence in the area remains credible. What the negotiators for the "normalization" with the P.R.C. seemed to have forgotten temporarily is that on that score Peking is just as anxious for a credible U.S. presence in the

Western Pacific as is Taiwan. This is likely to continue to be the case as long as Soviet power grows unabated and the "polar bear," as the Chinese Communist leaders like to call the Soviets, swims unrestrained in the waters off China.

Such considerations would tend to point toward a couple of very clear conclusions for the future of U.S. policies on the Taiwan question. First, there is not likely to be any quick or easy solution, and the current situation cannot be expected to change rapidly. Second, there is no need for American impatience. What appears to be a still murky and unresolved issue may, in reality, be an issue which is not at all unsatisfactory and one on which any precipitate action would only make matters worse. Finally, it should be clear that the Taiwan-China relationship is more and more a part of the whole Pacific Basin security problem, and that is one from which the United States cannot and should not try to disengage.

COMMENTS

*Yuan-li Wu**

At this conference a variety of issues has been discussed: was normalization appropriate; was it instituted at the right gains or losses to the United States? But my concern is the Taiwan issue which remains unresolved and which will not be resolved in one fell swoop. I propose, therefore, to share with you some of my own thoughts. My purpose is neither to re-examine the past nor to apportion either blame or praise, but to look to the future.

First, whatever one may think of normalization, it has had the effect of changing the international environment in Northeast Asia and the Western Pacific with a special focus upon Taiwan. It has affected the perceptions of the decision-makers of the major powers; their responses have in turn affected the subsequent decisions and perceptions of other powers.

What are the advantages and disadvantages to the major powers of maintaining Taiwan as an independent entity? What if Taiwan were no longer an independent entity but subject to the influence of an adversary or potential adversary of any of the major powers?

To the People's Republic of China (P.R.C.), Taiwan is in a unique position to provide a strategic lever against Japan by virtue of its location on Japan's

* Consultant to the Hoover Institution on War, Revolution and Peace at Stanford University; Professor of Economics, University of San Francisco; Specialist in international economic and political affairs.

sea routes, through both the Taiwan Strait and the Bashi Channel. Taiwan is also important to the P.R.C. because it is on the only side of the Chinese mainland that is not blocked by the Soviet Union or by powers technically allied with it. To the Soviet Union, the control of Taiwan must be denied the P.R.C. since Taiwan is the only place that offers Peking potential leverage against Japan. Taiwan is the only remaining country besides Japan that would complete the Soviet encirclement of the P.R.C.

As long as they are hostile towards each other, neither the People's Republic of China nor the Soviet Union would wish to see Taiwan in the opponent's hands as exemplified by the reasons stated above. Consequently, stability in the Western Pacific would be disrupted if either Peking or the Soviet Union believed that Taiwan could fall into the hands of the other. That would be a situation fraught with danger.

The second point that I wish to stress is that Taiwan is also important for the United States because it is situated on the sea routes of Japan. Therefore, Taiwan should be denied to any country that is potentially hostile and interested in disrupting the U.S.-Japanese relationship. Furthermore, if the P.R.C. should turn out to be more aggressive and expansive than we would like to see, we might need an alternative — Taiwan. Finally, in the event of a Sino-Soviet rapprochement and to the extent that the Eurasian continent is under Soviet influence, we would wish to have an island defense line along the eastern coast of Asia as a bulwark west of Hawaii.

For the above reasons, it is essential that we build up Taiwan's confidence in its own security and convince Peking that it is in its own best interest not to disturb Taiwan's sense of confidence. Otherwise, Peking might compel Taiwan to undertake a radical policy change that might prove regrettable. In that connection, if you examine carefully the Taiwan Relations Act,¹ you would probably find that the American Institute is not particularly appropriate as a vehicle to preserve military liaison in matters requiring a timely response. Closer coordination and contact between the military on both sides is needed. I wish to stress that reinforcing Taiwan's confidence and security will not damage our relations with the P.R.C. Rather, only when the former feels sufficiently secure and the latter is convinced that it will be futile to use force to reincorporate Taiwan, military or otherwise, can there be a fruitful dialogue between the two countries. Such a dialogue will benefit the continuation of profitable coexistence between Taiwan and the People's Republic of China.

Finally, we have heard a great deal about the possibility of trade between the P.R.C. and the United States, with estimates ranging from

1. Pub. L. No. 96-8, 93 Stat. 14 (1979). See Appendix-Selected Documents p. 114 *infra*.

\$1.6–2 billion worth this year to \$4–5 billion by 1985. All this speculation is predicated upon the assumption that modernization programs will succeed. Basically, there are only two routes by which the Chinese might succeed in their modernization program. One is the Saudi Arabian route, *i.e.*, mineral and oil exports, the only problem being that there is a substantial time lag (seven to eight years) due to the construction of the new production facilities. The South Korea or Taiwan route is the second route to P.R.C. modernization, featuring the exportation of textiles, garments, electronic material and equipment through business firms. Those involved include the Chinese, Japanese, people from Hong Kong and other foreigners who will participate in joint ventures and other arrangements. This method is opening the bottle and letting the genie out. One may not be able to put the genie back. In the end, the Chinese may no longer have a system that they could truly call communist. That would be fine with us, but probably not with Mr. Teng and his colleagues. They probably are as truly communist as they claim to be.

Then there are two modes of failure. One is the Albania-Burma model. That is, nothing much happens for decades except some increase in the population, sufficient to offset any increase in output. The other is what I call the Iranian model, highlighted by a period of expansion which is followed by collapse. In either case, one would find east of the Soviet Union a large land mass and population that is impotent in the world arena, creating problems for everybody and of doubtful use as a counterweight to the Soviet Union.

Let me conclude with a story. One famous Peking opera is entitled "The Undefended City." Scene one opens with Chu-ke Liang, the Henry Kissinger of his time in the period of the Three Kingdoms, sitting on top of the city wall. A scout comes to him to report that the enemy's troops were about twenty miles away. Chu-ke had no troops at home and for the first time, Tsao Tsao and his troops caught the famous strategist unprepared. What was he to do? He ordered that the city gates be opened, that a banquet be set on top of the city wall and that a few old, dilapidated street sweepers work on the street, with no troops in sight.

Scene two is set in the enemy's camp. The scout of Tsao Tsao's troops came back and reported that as far as he could see the city was undefended, and that Chu-ke Liang was just enjoying himself and having a banquet laid out. So the Security Council was called and a meeting took place in Tsao Tsao's camp. The members of the meeting came to the unanimous conclusion that the moment to attack had come because the enemy was caught unprepared. But Tsao Tsao said, "No, we retreat because never would Chu-ke be caught unprepared — he is far too sagacious, too wise, too farseeing, too good a planner."

I would submit that Chou En-lai and his successor, Mr. Teng, might be playing the same game.

CHAPTER IV.

DEALING WITH THE CHINESE

*Alfred le S. Jenkins**

The continuing Chinese revolution is certainly the biggest and possibly the most thoroughgoing social transformation the world has ever seen. My first posting in the Foreign Service was to Peking, as was my last. So great were the changes in the quarter-century intervening, my experience was, indeed, "a tale of two cities." It is awesome to watch one of the world's oldest civilizations methodically taking itself apart — at times, as during the height of the tumultuous Cultural Revolution, seemingly blasting itself apart — and then meticulously trying to put itself back together again in a vastly different form. The course which that revolution will eventually take will have a profound effect on the future of us all. Especially affected will be the manner in which the United States relates to the Chinese — including of course, Taiwan.

For more than 3,000 years, the Chinese developed their remarkable culture with minimal outside influence. When the Middle Kingdom was invaded, its invaders tended to adopt the more advanced Chinese civilization. The Chinese naturally came to view themselves as the center of world civilization. In the middle of the last century, however, the comfort of China's womb-like isolation and the self-satisfaction of its presumed centrality were shattered by the not-so-civilized military and economic insistencies of the industrially advanced West. The erosion of the two thousand year-old Confucian social order began. For the better part of a century, the increasingly conscious, deliberate destruction of that ancient social order by the Chinese themselves has caused repeated crises of national authority.

At the turn of the century, America's trade and other interests in China prompted us to proclaim the so-called Open Door policy. This helped save China from dismemberment by the Europeans, the Japanese and the Russians, but we were quick to share in the rapacity of those powers, short of territorial demands. At the same time, our rather pious interpretation of the Open Door policy fostered in us an affectionate, yet presumptuous protective feeling for the Chinese. This was strongly nurtured by the missionaries who followed the battleships into China. In general, the missionary effort was viewed by the then religiously eclectic and tolerant Chinese as an imperti-

* Former Deputy Chief of the Liaison Office in Peking, China. Mr. Jenkins enjoys the distinction of being the only diplomat to have served on the mainland both before and after the Communist regime assumed power.

ment claim to a monopoly on truth, as well as a fundamental challenge to the Chinese way of life. Indeed, the modernizing influence of the secular institutions so prolifically spawned by the missionary effort — hospitals, schools and colleges — caused violent opposition to the missionary effort, a violence finally resulting in the Boxer Uprising. Just how much religious impact the missionaries made on China is moot, but they certainly made a heavy impact on America. Many a dollar was dropped into the collection plate with the sincere and fraternal, if naive, hope of saving our "heathen" Chinese brothers from starvation of their bodies and damnation of their souls. The century and a quarter love-hate relationship had been well established.

The Nationalist, supposedly democratic, Revolution of 1911 intensified American sympathy for China. Under the leadership of Sun Yat-sen and subsequently, Chiang Kai-shek, fairly substantial social and economic progress was made, especially considering the magnitude of the problems. But the long Sino-Japanese war fragmented the country and undermined the integrity of the Nationalist Revolution. The regime became venal and ineffective, and along with civil war, inflation finished it off until its revival on Taiwan. The Communist revolution gained its strength from the peasants and the intelligentsia, promising land and national dignity after China's 100 years of ignominy.

Many people have forgotten that our diplomatic and consular personnel remained on the mainland of China for months after the Communist take-over, until the Communists made it impossible for us to stay with any semblance of dignity. I myself remained some eight months under the Communists in Tientsin where I had been transferred after two years in Peking. When I was called home, I was asked by the Assistant Secretary of State whether I thought we should recognize the new regime.¹ I said I supposed eventually we should, for I suspected it was there to stay; but I did not think we should be hasty, partly because I was not convinced that the new regime would return the compliment! Chairman Mao had announced the previous summer his "lean to one side" policy (*i.e.* toward the Soviet Union) yet, for the ensuing decade it seemed on the surface more like a "prostrate to one side" policy.

It is not surprising that capitalism is a dirty word in China, where the free enterprise system never evolved as it did in the West. Furthermore, capitalism in China was inextricably associated with semi-colonialism. China is, of course, Communist in ultimate intent and Socialist in present practice. I

1. *Editor's Note:* The Assistant Secretary of State to whom Mr. Jenkins refers was W. Walton Butterworth, Director of the Office of Far Eastern Affairs (1947-49). Today, the office is entitled, Assistant Secretary of State, East Asian and Pacific Affairs.

doubt that the intent will ever materialize and the socialist structure is in trouble. In the past, the Chinese have tried to reach their goals largely through a combination of exhortation and intimidation but they are now finding that these methods have severe limitations. Communist society in China has been a grey one, with little room for the soul to run and jump. But Chinese practicality seems to be coming cautiously to the surface. Actually, Chairman Mao was not a very orthodox Marxist and his most successful followers are turning out to be not very orthodox Maoists. Maoism was designed for a sedentary, chiefly agrarian society and industrialization, a course on which China seems now irrevocably set, will bring very fundamental changes in the nature of the society — mobility, urbanization and, of course, better education. (The Chinese may or may not succeed in their efforts to prevent the large cities from becoming larger, but countless smaller cities are certain to spring up.) In short, I believe the Chinese people are among the most pragmatic on earth. They have an enormous affinity for that which works. I believe that the Chinese will prove too intelligent and perceptive to hold on indefinitely to anachronistic policies out of blind loyalty to ossified dogma.

So far, the Chinese revolution has taken sharp twists and turns. During periods of relative leniency, the intelligentsia and the technocrats have usually come forward, regretting their emergence in the inevitable period of orthodoxy which followed. Accordingly, the foreigner has experienced varying negotiation climates, depending not only on the state of bilateral or multilateral relations, but also on the trends of Chinese domestic policy.

The first contact I had with Chinese Communists was heartening. In mid-January 1949, on the day after the battle for Tientsin ended, the Consul General and I met with some half dozen members of the People's Liberation Army who were temporarily running the city. They were an impressive lot: young, clean-cut, intelligent, articulate, personable, and almost intrusively healthy. We were given a perfectly reasonable lecture on how there would no longer be special privileges for foreigners in the New China, a change of which we fully approved. We were assured that so long as we dealt on a basis of equality and reciprocity we could expect mutually satisfactory dealings. The discussions were pleasant and cautiously friendly.

Satisfactory dealings, however, turned out to be more than two decades away. While we were waiting for "the dust to settle" after the Chinese civil war, the Korean War intervened and changed our China policy overnight. The U.S. China policy became one of declared opposition to Peking and resumption of support for Taipei.

The long and bitter negotiations for the peace treaty at Panmunjom baptized us in the realities of the adversary type of negotiation with the Chinese, and the even more drawn-out Warsaw talks with them further

educated us in this type of frustrating, unsavory and largely sterile exercise. The Warsaw talks, carried on for the better part of fifteen years, resulted in but one negotiated agreement (on repatriation of citizens) and involved rejection of more than twenty proposals. There were times when each side evidently wanted to make a limited approach to the other, such as the policy of an exchange of newsmen. Not until 1970 did this readiness appear on both sides at the same time. During the 50s, the bitter legacy of the Korean War and the paranoia induced by the McCarthy era prevented a United States approach to the Chinese. During this decade, the Chinese were somewhat forthcoming; by the mid-50s, they desired formal U.S. recognition, and I suspect, were already finding problems in their ostensibly understudy relationship with the Soviet "big brothers." Indeed, the climate was such that the negotiations I carried on in Geneva in 1954 were conducted with unfailing civility and partial success in obtaining release of Americans detained in China against their will.

During the 60s, we tried to be more open-minded but found the roles switched. The Chinese were then not ready to move. They were picking up the pieces from the economically disastrous (but partially, politically successful) Great Leap Forward; they had had three bad crop years and they were adjusting to the departure of the Soviet technicians. Understandably, they would not negotiate from weakness. Furthermore, they were unhappy even then with our policy toward Vietnam and, of course, with our continuing support of Taiwan. So, in the mid-60s, the Cultural Revolution and the Red Guard disruptions began. China entered upon its own version of a paranoid "McCarthy period" in which they could not have anything to do with the so-called imperialists. During this very electric period, an even more stringent form of adversary negotiation ensued. For a time, the Warsaw talks were even broken off. This tense atmosphere was finally dispelled and relations were incrementally established following a series of events. The Cultural Revolution, the Soviet invasion of Czechoslovakia, the Brezhnev Doctrine, Soviet cocktail party talk of a possible "surgical operation" to remove Chinese nuclear installations and an enormous Soviet military build-up on the long Sino-Soviet border all combined to make possible ping-pong diplomacy and the Kissinger and Nixon trips to seek détente.

I should like to return to the characteristics of adversary negotiation. When Alex Johnson met with the Chinese at the ambassadorial level in 1955 to initiate the series of talks which later became the Warsaw Talks, he arranged the chairs more or less in a circle. He wanted to avoid the adversary implications of dividing the chairs into opposing sides, and to invite informality which was so lacking in the exasperating Panmunjom negotiations. When it was, however, the Chinese turn to arrange the second meeting,

they placed the chairs so that opposing sides faced each other across a gap. This remained the pattern for the next fifteen years of palaver.

Actually, the talks did provide the space and time for a then pathologically Sino-centric, revolutionary China and a world-oriented, conservative America to adjust to each other's markedly different styles, policies and philosophies. They provided a forum for bringing up a very wide range of subjects of mutual interest and concern; even when no tangible results were forthcoming, the subtle evidences of changes in terminology and emphasis from crisis to crisis contributed toward the all-too-little mutual understanding possible in that hostile circumstance. At least the two governments had the means of signaling each other promptly and, if necessary, in confidence. (The confidence was obtained only in a rare meeting between the two ambassadors in one or the other of their embassies. The regular conference room was bugged.) The mechanism of the talks proved to be especially valuable in tailoring down the military action in the off-shore island crises.

For the most part, however, the talks were used for an exchange of polemics and for painfully soporific recitations of positions. I attended nineteen talks in Warsaw as an adviser, first to Ambassador Jacob Beam and then to Ambassador John Cabot. Sometimes it seemed as if each side was making credit points with its own exigent gallery back home rather than talking to the party across the table. Today, some of these exchanges read like petulant attempts to make mere debating points. I cringe to recall that I was "particeps criminis" in these dreary exchanges, for in addition to advising on some of the Warsaw talks, I drafted the guidance in Washington for many of the others. Yet the climate of the time made it all deadly serious.

When in a strictly adversary relationship, the average Chinese negotiator is a highly Sino-centric chauvinist, a dedicated ideologue, evincing the static and provincial quality of Chairman Mao's thinking. He is usually, however, very articulate and has done his homework thoroughly. He has a consuming, not to say blinding, sense of national rectitude. In the past, he could be expected to have a distressingly limited understanding of the rapidly evolving modern world and its implications, but that is changing as more Chinese have travelled and attended conferences and meetings all over the world. He is persistent and likely to be numbingly verbose, using repetition in the tiresome manner of Madison Avenue — and often with the same telling effect.

The Chinese negotiator will usually be armed with a cascade of facts, but they may only be used to embellish doctrinal preconceptions, with little logic or relation to the real world. Facts will often play a subservient rather than a corrective role in forming a conclusion. The "non-negotiable" principle and rigid dogma will be foremost. If on our part, however, we exhibit persistence, composure, patience and sometimes a very valuable bit of insouciance, the

"non-negotiable" will sometimes turn out to be negotiable, or will quietly drop out of the discussion. While the Chinese positions may be couched in ringing ideological terms, they are almost certainly more intimately related to the more pragmatic concerns of national security, vital interests and China's standing in the world — all of which have a perverse way of flying in the face of ideology.

In the adversary role of negotiating, the Chinese are particularly prone to extensive use of hyperbole, characteristic of authoritarian societies, especially hierarchical ones. China continues to be both. (For some reason, however, the phraseology in Chinese does not sound quite so stark as it does when literally translated into English.) In addition, they will often use maddeningly patronizing phraseology, such as "We caution the United States side to ponder this well." Although sensitive to matters of face themselves, the Chinese are masters of invective and insult when engaged in adversary negotiations. They use rudeness in hopes of making the other side lose its temper.

The Chinese are usually sophisticated in tactics. This may be evinced in the very beginning when they try to affect the substance of negotiations by the way in which an item is phrased in the agenda. The battle for the agenda can, in fact, be crucial. Also, a Chinese negotiator would not show satisfaction at an achieved success while negotiations are in progress; he knows this would enhance his opponent's competitive resolve. He may be quite "poker-faced" throughout. The novice may think a proposal he has offered is meeting with approval, or at least with tolerance, because there is initially no overt show of disapproval. Later, he may find that it is totally unacceptable. Henry Kissinger places the Chinese high on the list of sophisticated, able negotiators; but then he was negotiating with the most sophisticated, personable and effective of them all: the late Premier Chou En-lai, whom I consider to be one of the most impressive diplomats of all time. Of course, we were meeting with him in a far more agreeable climate than the former strictly adversary one. The Chinese can be incomparably likeable when the occasion permits.

The Chinese are more willing than most westerners to forego immediate advantages if they would come at the cost of long-term disadvantages. This may be related to the different sense of time in East and West. The American wants immediate results because his watchful constituency demands them. Knowing this, the Chinese often play very effectively on public opinion. The traditional approach to time, it should be noted, is reinforced by the Communist belief that time is on the side of Communism, courtesy of alleged historical inevitability.

In Chinese Communist adversary negotiation, capitulation leading to the defeat of the opponent is the goal; compromise in finding common ground on

which to stand, for mutual profit, is the more classical, but not universal, western pattern.

It was mentioned earlier that Chinese Communism is a secular religion. It has virtually all of the trappings of a religion: canonized writings, a strong sense of mission and of infallibility, an abhorrence of heretics, and for a time during the Cultural Revolution, even a near-deified leader. All that was lacking was a devil, and for a time we were elected. For a while, the Soviet Union was a strong competitor for that role, surging ahead in the seventies. During the 50s and 60s, the Chinese seemed to regard enmity between China and the United States as basic, natural and destined to be long-lived. This philosophy embraced the possibility of periods of peace or even of collaboration, but the long-term inimical nature of the relationship remained. This philosophy, however, would seem to be based on pristine dogma unsullied by reality. If dogma is set aside, there is little reason why our two countries should not get along reasonably well. Our economies seem complementary; there are many areas in which we can learn from each other. We have no troublesome contiguous territories, and when given a decent chance, the personal chemistry between our two people appears to be uncommonly felicitous.

I believe we cannot yet be sure whether we are in one of those temporary periods of a beneficial relationship that is destined to revert some day to a more hostile confrontation, or whether the earlier philosophy of Peking may itself have evolved. Certainly the negotiations with the Chinese in the 70s have been a very different proposition from those of the 50s and 60s. Most of the world was relieved when the representatives of two great nations in hostile confrontation for twenty-two years sat down and talked with courtesy and candor, listening and responding reasonably and constructively. This had rarely happened before. In the Kissinger-Chou negotiations prior to the Nixon trip, there was astoundingly full and frank give-and-take. Each side not only gained a clearer grasp of the thinking of the other, but more importantly, they gained a clearer understanding of just why each side thought as it did. There was little peddling of dogma and no diplomatic double-talk. Those negotiations in Peking were fascinating, exhilarating and, for the most part, satisfying. The Chinese were tough, but they were forthright, fair and generally constructive. We gained respect and liking for most of our Chinese counterparts, even while warmly disagreeing with them on a number of issues. Those several trips to China were emotion-filled for an incurable Sinophile such as myself. I derived great satisfaction from the cautious understatement of our new-found relationship. The unnatural intensity of the traditional love-hate syndrome in Sino-American relations seemed to have become muted, more objective and realistic, making the new relationship much more likely to last. Our increased understanding of

China's past humiliation reached the level of empathy. We were able to recognize China's legitimate security interests while stating clearly our opposition to foreign domination of Asian developments. We gained renewed appreciation for China's magnificent culture but had serious reservations about some of the curious courses it was currently taking. And, last but not least, we gained a far greater understanding of the uniquely complex and difficult problems of modernization and change which China faces.

My heading the advance group which opened the U.S. Liaison Office in Peking in April 1973 several weeks before the arrival of Ambassador Bruce was an especially gratifying privilege. I could not have asked for better cooperation from the Chinese in that endeavor.

In the past few years, the fond hope has grown that the Chinese now realize that borrowing from the technologically advanced centers of the world will not resolve their problems. Rather, the Chinese must gear their technological development into an increasingly interdependent, transnational economic and cultural world matrix. That hope may be overblown. But at a minimum, our two nations have found some common ground on which we can build mutually profitable cooperation in quite an array of fields. Each has a clearer view of those national priorities which may be safely pursued on a shrinking, interdependent planet. For that the whole world should be thankful, and with care, we can build towards more.

Much of that requisite care involves understanding the fundamentally different nature of the problems faced by each society, the different historical antecedents and the different current motivations, so that we may discover how diversity can be made to enrich an association rather than poison it. Neither the normally placid Chinese nor the normally jaunty American is inscrutable, unless one fails to scrutinize. If we will only spend the necessary time and energy in forming a clearer understanding of the basic beliefs and motivational impellents of others as well as ourselves, then our natural kinship with all humankind might emerge more clearly and we may outgrow the precious tenacities of exclusive monopolies on truth — petty luxuries simply no longer affordable in our polyglot global community.

CHAPTER V.

THE VALUE OF THE CHINESE CONNECTION

*Roger Sullivan**

Americans find it very difficult to be dispassionate on the subject of China. When people ask me, as you have in my informal remarks to this Workshop, to specify what benefits or what value there is to the United States-China relationship, if any, I always hesitate to answer. This is not just because there are no simple answers, but also because the answers to the questions depend on one's interests, expectations and perhaps, one's prejudices.

In July, 1971, President Nixon said that there can be no stable or enduring peace without the participation of the People's Republic of China (P.R.C.) and its 800 million people. While we believe that this statement is generally still true, we can be a lot more specific about the value of the so-called "Chinese Connection" today than we could in 1971. The United States' establishment of closer ties with China, culminating in the establishment of diplomatic relations, has made possible extensive exchanges on both global and regional issues. We have been able to explore common interests and to develop shared perspectives with a much greater openness and trust than was possible in the past. Before the establishment of diplomatic relations, our discussion of problems was, more or less, limited to an arm's length exchange of positions. Now, there is much more give and take; a real desire, not just to exchange views, but to resolve problems. There is a degree of cooperativeness to the relationship that few had dreamed possible in the early stages of normalization.

This very dramatic change in our relationship with China is a direct result of normalization. There has been a reduction of tension between China and the United States on several issues (Taiwan is a dramatic example of that; Korea to a lesser, but still real degree). We have also reaped an important side benefit, with the possibility of much closer relations with Japan as a consequence of the good relations between China and the United States. For the first time in this century, both Japan and the United States are in a position of not having to choose between having good relations with each other and having good relations with China. From the period after the war until, at least, 1971-72, there was not only concern about the "Chinese threat," but there was also the problem that American hostility towards China was an obstacle to a closer Japanese-American relationship. It

* Deputy Assistant Secretary of State for East Asian and Pacific Affairs.

certainly was the major cause of opposition in Japan to the U.S.-Japan security relationship.

In the Southeast Asian countries, there is not only a reduction in fear of China (in fact, fear has changed to a great interest in cooperating with China as a means of containing Vietnam), but also a diminution of fears about a withdrawal from the area on the part of the United States. The United States is redefining its relationship towards Asia, demonstrating by its normalization of relations with China that, far from losing interest in the area, the United States is becoming more deeply involved, although in a different way from the past.

This new political relationship has also opened up new economic possibilities. Here, the China euphoria has been mislaid. It is very easy to exaggerate the benefits that can flow to the United States, in terms of trade and economic relations, from normalization. Those who like to dismiss that relationship have emphasized China's poverty and the relative unimportance of China as a trading nation. Both of these factors are very true. There are, however, opportunities for the United States. We have resolved most of the obstacles to an economic relationship with China. In particular, we have solved the claims and assets problem; we have disposed of, though we have not exactly solved the textile problem; we have also paved the way for the signing of the trade agreement which was initialled by Juanita Kreps on her visit to China.¹ This trade agreement — which I am confident will meet with support in Congress — will extend to China "most-favored nation" status and provide not only greater opportunities for China to export to the United States, but will improve the climate in China for American exports and American cooperative ventures, particularly in energy-related areas. We have already had some extensive negotiations between American oil companies and the Chinese on the exploration of China's offshore oil resources.

Questions always arise about all these stories we hear that China is backing away from modernization and economic relationships with the outside world. This is simply not the case. What we have seen in the last few months is a reassessment on the part of the Chinese of the commitments or semi-commitments they have already made; they wanted to make sure that the decisions they were making were in line with their priorities. By no means were the Chinese backing away from the basic policy of modernization or their basic modernization program. In fact, in the month of May, the Chinese have signed loan agreements with foreign governments and banks totalling \$21 billion. This is \$21 billion of a total \$26 billion to which the Chinese have gained access. Negotiations are underway which could bring

1. See the text of William W. Clarke's speech, p. 92 *infra*.

that total up to \$30 billion. We now expect the Chinese to resume their program of major capital purchases as they complete their reassessment.

These loan agreements should enable the Chinese to spend something on the order of \$50-60 billion on imports of capital goods and technology over the next five years. Our exports to China this year should be well over one billion dollars. By 1985 they should easily be in the range of about \$5 billion each year. This is certainly not going to solve America's economic problems, but it is significant.

It is important that we take a long range view, keeping in mind that what we do with China today is going to continue to affect events and attitudes for the next twenty-five or thirty years or more. I would hate to see us put ourselves in the position where, in the year 2000, we look back with regret over some of the decisions we made or decisions we did not make in 1979-80. I do not know how many people realize the price we have paid over the years for such a simple thing as John Foster Dulles' refusal to shake hands with Chou En-Lai in 1954.

But when I say we should think strategically, I am not talking about entering a military relationship with China. We are not trying to use China as a counterweight to the Soviet Union. It would be a mistake to think in those terms. We have said many times that we are not improving relations for short term reasons. We are not playing the China card or any other dangerous games with our relationship. Our goal, and what should continue to be our goal, is a strong and secure China. By that we mean a China that can provide the necessities to its own people and protect the capability to maintain an independent foreign policy. A China like that could then play the kind of a role that China must play if global and regional peace is to be maintained.

Our opinion about China and the current Soviet paranoia have really turned reality on its head. The danger to China has never come from its strength, but from its weakness. China is now acknowledging that weakness for the first time and is starting to do something about it. I saw the beginnings of this in July last year when I went to China with Dr. Frank Press, the President's Science Advisor. It was a very dramatic time when it became apparent that China had made up its mind to open itself up to the United States economically and technologically, as well as diplomatically. It was absolutely clear on that visit that progress in our relations would come very quickly. Deng Xiaoping left no doubt in our minds that he had made up his mind that China had to move ahead and had to move very quickly if it was going to rebuild its economy and its society from the bottom up. The school system had been destroyed and the economy was barely functioning. We could almost detect a note of desperation. It was clear that everyone we

talked to knew that they had to do something, that they had to do it quickly, and had to do it correctly or face collapse.

It was this realization and not any short-run considerations that prompted the Chinese to move ahead with the United States. China needs a long-term relationship, not just with the United States, but with Japan and Europe in order to get the technology, the capital and the trade that it has to have if it is going to modernize. At the same time, it is clear that they also see this new relationship as a means of providing themselves with a breathing space (a sort of political deterrence) from Soviet pressure.

I believe that it is crucial to regional and global peace that China not fail in this modernization effort, that it succeed, at least to the extent of being able to maintain its independence and play a constructive role in the region. A China like that would not be a threat to anyone. Rather, a China which found itself rejected by the outside world, unable to get the technology and capital it needed, failing in its effort of modernization, embittered and impoverished, and forced to come to terms, perhaps, with its hostile neighbors, would be a threat to all of us.

Asia is and will continue to be of increasing importance to the United States. Anything that happens in Asia will in one way or another affect or be affected by China and the U.S.-China relationship. It took us thirty years, two wars, many lives and billions of dollars to learn that lesson. I hope we will not forget it.

COMMENTS

*Michael Y. M. Kau**

In recent months, the Carter administration has been using various public forums to defend its policy and methods of normalizing relations with the People's Republic of China (P.R.C.). It is natural for administration officials to explain policies of major significance to the nation on behalf of the President in order to create public support and consensus. The presentation of their arguments has, however, been less than candid. While stressing enthusiastically the positive value of normalization and the Chinese connection, they fail to inform the public of all the possible flaws and risks involved. They assert that Washington had obtained the best possible terms from

* Professor of Political Science, Brown University; Specialist on Chinese political developments.

Peking; Taiwan has become even more secure as a result of normalization; and the Chinese connection shall be beneficial to peace and stability in Asia. Serious questions can be raised with respect to these assertions.

The alleged benefits of our new policy are simply optimistic assumptions on our part, clearly not proven facts. Such benefits may or may not be forthcoming. Even if they can be achieved, the question remains as to what risks and pitfalls we will have to face in the years ahead. Beyond the problem of policy objectives, the method and process of normalization should also be scrutinized. How an issue and its negotiations are handled is often just as important as the ultimate outcome itself.

Before discussing these various questions, it is important to mention a few facts about Taiwan, the party which our China deal affects most directly. Taiwan has too often been treated as an abstract, dispensable pawn in the superpower game between the United States and the P.R.C. In comparison with a huge China, Taiwan may indeed appear quite small and insignificant. It should be remembered, however, that Taiwan's population of over 17 million is four times larger than that of Israel and is larger than the population of over 100 countries in the United Nations. Taiwan's current \$26 billion two-way trade ranks twentieth in the world, and at present, Taiwan is the eighth largest trading partner of the United States. With our explicit initiatives and encouragements, the Republic of China (R.O.C.) on Taiwan has been our faithful ally and friend for the last three decades. The island and its people served well our strategic and political interests in Asia in the era of the Cold War against Communist expansion and during the years of the Vietnam War. Taiwan's prosperous economy has become the "success story" of American foreign aid. Yet in the process of our involvements, we have also helped create a peculiar international status for the island, to which we have incurred a moral and political obligation for its security and well-being. Hence, no discussion of our normalization policy can be meaningful without taking into consideration the issue of Taiwan.

Turning to the substantive questions concerning the value of normalization and the Chinese connection, first, the Administration argues that normalizing our relations with the P.R.C. is a matter of "recognizing simple reality." At issue here is not whether we should have recognized the P.R.C., but rather on what terms should recognition have taken place. By totally accepting Peking's demands to withdraw recognition from the R.O.C. and to terminate our 1954 Mutual Defense Treaty with Taiwan,¹ we have clearly "abnormalized" our relations with Taiwan. The end result is that Taiwan is reduced to a "non-entity," we "acknowledge" Peking's claim over the island, and allow the future of its 17 million people to drift in limbo at China's

1. [1955] 6 U.S.T. 433, T.I.A.S. No. 3178.

mercy. Since the initiation of the Nixon-Kissinger negotiations with the Chinese in 1972, the issue has been the crucial question of Taiwan's external security vis-à-vis China. Peking leaders have threatened repeatedly to liberate Taiwan by force, if necessary. It is absolutely incredible that the Carter administration did not even ask the Chinese leaders for a pledge not to use force to settle the Taiwan issue.

The weak negotiating position that the Administration took is indeed hard to comprehend, especially when there is a clear consensus that under the current Chinese domestic and external situation, the Chinese need us more than we need them; we were in a position to negotiate from strength. This same meek attitude of the Administration was clearly revealed again in the original version of the Taiwan Omnibus Bill submitted by the President to the Congress. The bill said nothing about our continued commitments to Taiwan's military and economic security against external threat. Fortunately, Congress had the wisdom and courage to write into the final version of the Taiwan Relations Act² what the Administration was, under pressure from Peking, afraid to say.

Second, Administration officials argue that the P.R.C. has neither the intention nor the capability to take over Taiwan. Of course, it may be true that China would not and could not invade Taiwan immediately, but nobody can tell what will happen in the long run. The Administration did not remind us that Peking signed a peace pact with Tibet in 1951, only to use force to crush the Tibetans in 1959. In 1962, China mobilized its forces to teach India a bloody lesson. If this history is too remote to recall, China's invasion of Vietnam last February ought to be still fresh in our minds. In spite of serious warnings from the Soviet Union, China did not hesitate to use force to try to achieve its foreign policy objectives in India. If Peking can justify its action in Vietnam, it has even greater justification to use force on Taiwan. Besides, one should remember that Peking has never renounced officially the use of force to settle the Taiwan problem.

While the armed forces in Taiwan are well-trained and equipped, one should not fail to recognize the simple fact that when the chips are down, in a military confrontation between China and Taiwan, it will involve a contest between a giant of 900 million people against a dwarf of 17 million. It would surely be a very different contest from that between East and West Germany or that between North and South Korea. According to most military experts, there is absolutely no way Taiwan can sustain prolonged attack from across the Taiwan Strait by the world's third largest Navy (ninety submarines) and

2. Pub. L. No. 96-8, 93 Stat. 14 (1979). See Appendix-Selected Documents p. 114 *infra*.

Air Force (5,000 jet fighters), despite its edge of qualitative superiority and its control of the Strait.

In fact, Peking's calculus of liberating Taiwan may not be a military one. It is likely to involve a mixture of psychological, economic and political warfare, which is a low-cost and low-profile approach that can be ever more effective. A well-orchestrated military harassment or threat of harassment to Taiwan's trade can cause serious disruptions to the steady flow of raw material, technology and capital which constitute the lifeline of Taiwan's heavily trade-oriented economy. Once this lifeline is shaken, Taiwan could not maintain political morale and social stability and the island could be brought to its knees in a relatively short period of time.

Finally, the Carter administration argues that normalizing our relations with China can enhance peace and stability in Asia. Administration officials are quick to point out the unusual achievement that for the first time in this century we have both Japan and China on our side, and that we expect China to play a major role in the world arena. Thus, the Administration proclaims that "a secure and strong China" is in the interest of the United States and the world. Despite repeated official statements that we are pursuing an "even-handed" policy with China and the Soviet Union, the Soviets are clearly looking at our new policy posture with great concern and suspicion. Our willingness to give China most-favored nation treatment. Eximbank loans and sophisticated advanced technology is naturally causing the Soviets great alarm. As long as Moscow perceives that we are "tilting" towards Peking in the delicate balance of superpower politics and that we are playing the "China Card" against their global strategic interests, we will have to face whatever consequences may ensue.

Recent escalations of political and military crises in Indochina are clearly a case in point. Arguably, the way we handled (or mishandled) the process of normalization and the Chinese connection late last year apparently had direct bearing on the stepped-up interventions in Kampuchea (Cambodia) and Laos by the Vietnamese under Soviet support. Moreover, the Chinese invasion of Vietnam last February, which was viewed to have tacit approval from Washington, has clearly sped up Soviet build-up in Vietnam in recent months. We should be fully cognizant that the Soviet Union is the only adversary which has the capacity to threaten our national security, to engage in an arms race with us and to challenge our influence on a global scale. Furthermore, it should be remembered that the military capability that China is acquiring has no strings attached. The same weapons that China acquires from us today could be used against our allies tomorrow. In the same vein, neither can anyone guarantee that the feud between China and the Soviet Union will never come to an end and that the two powers will not once more resume their alliance of the 1950s. In this world of uncertainties, our

foreign policy should be based squarely on our own strength and leadership, and not on some naive and well-intended assumptions.

COMMENTS

*James C. Hsiung**

Since our China policy is only as sound as the conceptual foundation on which it is based, I propose to take a critical look at that foundation. But first let me suggest a distinction between "normalization" and a sensible United States-China policy. I am not questioning the wisdom of the former but merely questioning whether the China policy pursued by Washington, quite outside the "normalization" question, is a sensible one.

NORMALIZATION IN THE ERA OF MULTIPLE DETERRENCE

The normalization of relations between the United States and the People's Republic of China (P.R.C.) took place within the new era of multiple deterrence, in which the P.R.C. has joined the two super-powers in the coveted nuclear club. In fact the new era logically compels the termination of the non-recognition policy of the United States. That logic is inherent in the drastic transformation of the "rules of the game," as certain fundamental assumptions underpinning the strategy of conflict developed during the erstwhile dyadic deterrence period have been rendered invalid or called into question. While this is a very complex topic, I shall merely focus on one aspect — with the existence of a third adversary, there can be no winner in any nuclear conflict. Even assuming the United States wins in a hypothetical nuclear exchange with the Soviet Union, it would have lost in comparison to China, the bystander whose nuclear capability would remain intact and who, by default, would emerge as the strongest among the three adversaries.

A few new rules have been called into being as a result of the transformation of the international system into a "no win" era. In the first place, the concept of "massive retaliation" that was for so long the central pillar of nuclear strategy during the previous period is no longer adequate. It has to be augmented by the concept of "reward," as it is incumbent upon all the nuclear adversaries to reward one another for not rocking the nuclear

* Professor of Political Science, New York University; Specialist on the foreign policy of the People's Republic of China.

boat. Normalization, therefore, is consistent with the logic of mutual reward in the new era. In order to make the reward structure (*i.e.*, *détente*) work, a few other rules must be observed, including "no first use" of nuclear weaponry, and a commitment not to "gang up" with one against the other adversary. Stability in the system would be greatly compromised if either of these two rules should be violated.

THE KISSINGERIAN PREMISES AND THE OPENING TO CHINA

The opening to China and the modality set for it in the Shanghai Communiqué signed by President Nixon in February, 1972¹ followed certain premises, or basic assumptions, which can be identified with Henry A. Kissinger, the architect of Nixon's foreign policy.

The first premise was that the Sino-Soviet split was irreversible. A corollary to this was that the United States could take advantage of the Sino-Soviet split by alternately "tilting" to one end and then the other of the two Communist giants.

The Kissingerian "tilting" strategy ran afoul of one of the maxims (or "rules of the game") of *détente*, namely that none of the three principal adversaries should manipulate either of the other two against the third (*i.e.*, no "ganging-up"). In reality, the tilting did not work for the United States, but alternately alienated the Soviets (hence, the SALT II impasse for a few years) and the Chinese (resulting in reductions in Sino-U.S. trade in 1975-76 and a temporary return to militant rhetoric in 1976).

The second Kissingerian premise was that China was strong enough to be a counterweight to the Soviet Union, but not strong enough to threaten the United States. The obvious fallacy in this premise is its total neglect of the time element. What if at a given time China is strong enough to threaten both the Soviet Union and the United States? A statesman should anticipate such eventualities and make preparations accordingly.

The third premise was that if China was to be encouraged to direct its undivided attention northward to deal with the Soviets, all her "southern" problems — *i.e.*, the Vietnam war and the Taiwan question — must be resolved for her. I would say that the assumption here that decision-makers can deal with only one issue at a time — that China could not simultaneously deal with her colossal North and her "southern" problems — is alarming.

THE BRZEZINSKI PREMISES AND NORMALIZATION

The Carter administration's China policy, extending beyond the normalization of relations with Peking, is based on a set of premises mostly

1. 66 DEP'T STATE BULL. (No. 1708) 435-38 (1972).

formulated by the National Security Council staff headed by Zbigniew Brzezinski and assisted by China specialist Michel Oksenberg.

In the first place, the Brzezinski-Oksenberg team has inherited the three Kissingerian premises above, but has carried the Sino-U.S. triangularity to a fixation in the sense that every aspect of U.S. foreign policy has become a function of an overriding animosity toward the Soviet Union. Whereas Kissinger merely played a "tilting" game, the Brzezinski-Oksenberg team has entrenched the United States in a game of card playing, *i.e.*, playing the "China card" against Moscow. The danger of this card playing lies in its assumption about the *permanence* of the Sino-Soviet split. It neglects the fact that the Sino-Soviet alliance of the 1950s was not the result of a temporary ideological affinity, but of convergent national interests. It was preceded by a secret alliance in the nineteenth century signed by Li Hung-chang and Count Witte in 1896, dictated by a common interest against Japan. Common national interests may again unite the two countries in the future.

Furthermore, the U.S. acceptance, at the Chinese insistence, of the anti-hegemony clause in the final communiqué signed by President Carter and Vice Premier Deng on February 1, 1979, violated the "no ganging-up" prerequisite for *détente* noted above.²

The most important Brzezinski-Oksenberg addendum to the Kissingerian legacy is the premise that it is to the U.S. interest to make China a "responsible" actor. There is a twisted logic in this reasoning which runs like this: One, if there is instability in the international political supergame, it is because China has not been acting responsibly. Two, if China has not acted responsibly, it is because she is not strong enough; so let us make her stronger. Three, if there is still no stability, then it is because we have not done enough to make China strong enough to act responsibly; so let us do more to make her even stronger. The implicit assumption here is that once made sufficiently strong, reaching a parity with the Soviet Union, China would be a "responsible" counterweight shielding the United States from the brunt of the Soviet threat. This goes back to the assumption about the *permanence* of the Sino-Soviet rift noted earlier.

The fallacy in the reasoning is its total neglect of the history of U.S.-Soviet relations. The *détente* between the two superpowers became possible only *after* the Soviets had reached a position of nuclear parity with the United States, not before. There is every reason to anticipate a parallel development in Sino-Soviet relations once China has reached parity. At least our policy-makers should not leave out that possibility in their planning for the future.

2. 79 DEP'T STATE BULL. (No. 2024) 11-12 (1979).

Furthermore, what assurance do we have that the Chinese conception of being a "responsible" actor coincides with our expectations? So far as can be ascertained, a military invasion of Taiwan, considered a province of China, would not be an irresponsible act, since it is, as Peking claims, an "internal affair." A China made sufficiently strong by the United States, with the expectation that she would turn her newly gained strength against Moscow, cannot be contained on a collision course over Taiwan, unless the United States is prepared to abandon the island completely.

The morals from the above are simple and evident: our expectations about the value of the China connection are only as sound as their conceptual bases. Most of the premises crucial to our China policy are either faultily conceived or are not coherent among themselves. Far from having all the obstacles removed in Sino-U.S. relations, normalization has left behind a volcano in the Taiwan Strait, the eruption of which depends on Peking's whims and willful manipulation in the future.

COMMENTS

*Jan S. Prybyla**

My comments relate primarily to the luncheon presentation by Roger Sullivan on the "Value of the Connection."¹ While I find myself in agreement with much that Mr. Sullivan has said, there remain aspects of the presentation which should, I think, be spelled out more clearly than they have been, and there are some areas where we disagree. My comments fall into three categories — facts, ability to pay and ability to absorb.

FACTS

Sullivan rightly warns against euphoria in the matter of the China economic connection. Some of this extraordinary excitement on our side is generated, no doubt, by the simple, but also illusory, numerical importance attributed to the China market: 1 billion toothbrushes and 2 billion armpits. Peking has reinforced this notion with the impression of "no nonsense

* Professor of Economics, Pennsylvania State University; Specialist on the economy of the People's Republic of China.

1. For the text of Mr. Sullivan's speech, *see supra* p. 35.

pragmatism" since the arrest of the Gang of Four and the return of Deng Xiaoping to somewhere near the top of China's power pyramid. Arguably, the new leadership is bent on modernizing the country at rapid rates (*vide* the targets of the ten year modernization plan), a process which calls for the acquisition from abroad of huge amounts of very elaborate and very expensive equipment and technological know-how. Presumably, there is room for many sellers — not just for the Japanese who got there first — so that, provided we get in on the deal fast, there will be many benefits accruing to certain American industries and sectors (and also presumably problems for some other industries and sectors such as textiles). Trade with the United States, which now runs at around \$1 billion, is expected to rise to roughly \$5 billion within the next few years.

In pursuing this line of argument, it is useful to bear in mind the distinction between present reality and future potential. The reality is that:

1. the per capita gross national product of China is on the order of \$400–450 but very likely less;
2. the average yearly industrial wage (modern industry) is approximately \$360;
3. the bulk of the peasantry makes about 20¢ per person per day from collective endeavor;
4. the Chinese authorities admit that ten percent of the population (100 million people) do not have enough to eat (other reports speak of 200 million peasants being in a condition of acute privation);
5. per capita grain production today is the same as it was twenty years ago;
6. annual foreign trade turnover is less than \$20 a head; and
7. the \$1 billion current trade with the United States represents one-third of one percent of total U.S. trade.

So, without in any way minimizing the usefulness of the China economic connection, it is good to remind ourselves that as of now we are dealing with 1 billion very poor customers. Moreover, these customers need our grain and technology more than we need their bristles and firecrackers. So, at the very least, we do not have to fall over ourselves in the scramble for a slice of the existing pie.

But what about the future? The Chinese are a prodigiously assiduous people, and the communist regime has shown itself capable of mobilizing the people's energies and channeling them into productive pursuits. The targets of the ten year modernization plan exemplify the determination of the regime to raise income by increasing the productivity of labor, capital and land through massive infusions of up-to-date technology.

I see two problems with these expectations. First, what we do know of the plan raises serious questions about its feasibility. The plan strikes me as a set of random, uncoordinated targets derived from the rule-of-thumb methodology "think of a number, then double it." A plan is a general equilibrium system, an internally consistent set of physical input-output relationships backed by a price structure which reflects fairly accurately the relative scarcities and utilities within the system. Given the state of Chinese economic science, which is still recovering from the severe damage inflicted by the Cultural Revolution, I doubt that anything even remotely resembling a plan in this sense exists in China today. Economists such as Sun Yeh-fang still reel from the beating they got during seven and more years in prison for having once dared to try and construct a socialist economic science applicable to China. Techniques of physical planning — *i.e.*, material balances, input-output tables and linear programming — have been allowed to fall into disuse and surely the price system must be in serious disrepair by now. (For example, the wage structure in industry has not been changed since 1956 despite far-reaching changes in the supply of, demand for and skill composition of labor.)

In this condition, it is curious to see so many business people from so many countries clamoring to get in on the presumed bonanza. I suspect that, in other cases, these very same businessmen and bankers would be more careful. Before extending credit, for example, or setting out on joint ventures, they would insist on more information and perhaps a feasibility study. Yet where China is concerned, one gets the impression that normally cautious and hard-headed entrepreneurs and capitalists succumb to the giddiness induced by target figures pulled out of nowhere by state and party bureaucrats who, but three years ago, were described by their opponents (then in power) as "the scum of the earth." I think it eminently reasonable for us to ask the Chinese authorities to at least let us see the ten year plan in its entirety, not just the spotty outline disseminated by the New China News Agency. A lot of people are likely to go broke if they hitch their fortunes to what looks like an unrealistic and conceptually primitive set of Chinese expectations.

The Chinese authorities are beginning to admit as much. The targets are being reappraised, rethought, retrenched, or whatever the euphemism is for pulling in the reins and taking a hard look at the whole thing. For example, the target of 400 million tons of grain by 1985 is said to be not feasible. The implied growth rate in grain production of four to five percent a year between 1978 and 1985 is quite out of reach. The same applies to the plan to turn out 60 million tons of steel by 1985. (I have heard that as much as half the steel output in China today is below minimum quality standards set by the state). The plans for agricultural mechanization have had to be stretched over a

significantly longer period of time. But as noted before, unrealistic targets are not the only or even the main issue. The basic issue is how the projected inputs and outputs mesh; and I suspect that they do not mesh at all because the Chinese planners have forgotten or do not know that they must mesh. Or they are quite simply too harassed by contrary political demands to do a proper job.

Second, there is almost certainly no agreement within the leadership about the plan. From the changes in direction, the trimming, inflating, equivocating and patching-up, one gets the unmistakable impression of internal discord. The disagreement seems to resolve less around technicalities than around the very conception of a great leap to modernity. Philosophical discord of this kind does not augur well for the future of the plan. Should the effort fail and the high aspirations raised at the dawn of the post-Mao leadership be disappointed, the possibility of a neo-Maoist xenophobic turning inward would, I think, be real. In any event, from the standpoint of the foreign investor and trader, China is not a nearly riskless society. While not lawless, it is still, by and large, without a law. While overall political stability has been demonstrated, there have also been very sharp policy swings. The present relative openness and outreach are not permanent fixtures on China's political firmament, nor are they reliable points to what the future may hold in store.

ABILITY TO PAY

China's ability to pay for all the things she proposes to import from Japan and the West hinges on the country's capacity to generate a sufficient volume of commodity and service exports. The repayment problem would be eased for a while if China could secure sizeable long-term credits from Western banks and governmental financial institutions. The major burden, however, falls on commodity exports.

There are three types of commodities which can be used for export in the next ten years: oil, materials from agriculture (*i.e.*, rice, processed foods) and manufactures.

Several problems arise in connection with oil exports. First, the quality of Daging oil leaves much to be desired; the oil has a heavy wax content and calls for the installation of rather expensive dewaxing facilities in the importing countries. Japanese refiners, for example, have done this with the help of sizeable government subsidies. Most of the currently exported oil comes from the Daging oil field, the output of which has probably peaked. Second, the bulk of China's projected exportable oil surplus through 1985 has been committed to Japan under the 1978 Sino-Japanese trade agreement. Of course, there is the possibility of increasing the surplus by drilling offshore.

To reach these deposits, a very large initial investment in exploration and production equipment is needed as well as "know-how." China will have to negotiate some combination of loans and joint ventures involving, perhaps, repayment in the product or even equity participation by foreigners in the joint undertaking. This will certainly add an acerbic edge to the ongoing leadership debate on the wisdom of the rapid and vast modernization drive. While there are no insuperable barriers, and the Chinese hope to use oil as an important means of paying the modernization bill, the oil export prospects over the next decade look less bright today than they did a few short years ago. Incidentally, the currently producing onshore fields are reportedly being used inefficiently and wastefully. Here, too, large investment in oilfield technology and equipment is needed if the resource is not to be squandered. One should also remember that despite China's determination to keep using coal as the principal energy source in the years ahead, modernization of the type and on the scale presently envisioned will inevitably lead to a substantial increase in China's domestic oil consumption. This, too, has to be factored in when estimating China's future oil exporting capacity. Should the most optimistic predictions materialize, China's oil will still be sold at OPEC-type prices.

The main obstacle to expanding exports of agricultural materials is likely to be the problem of raising farm output at rates substantially above the rates of natural population increase. In the past, agricultural output has grown at approximately two percent per year, just marginally above the growth rate of the population. Chinese agriculture has apparently run into diminishing returns to labor and almost the only way out of the quandry is to raise output through increases in factor productivity. This calls for a prior investment in land melioration, chemicalization, mechanization, improved transportation, storage and education, with the price tag in the tens of billions of dollars.

Exports of manufactures will have to negotiate a few major obstacles. First, over one-third of such exports consists of textiles which are import-sensitive in most Western countries and Japan; they compete directly with important domestic industries and evoke protectionist responses in no time at all. The United States has just slapped an import restriction on Chinese textiles. Second, there are problems of marketing Chinese products in highly sophisticated and fickle Western markets; both the quality of the goods and the quality of marketing techniques are at issue. Third, there is the competition from other low cost producers such as Taiwan, Hong Kong and Singapore.

It is not my intention to paint a gloomy picture of China's modernization and foreign trade prospects in the coming decade or so. I am merely trying to inject a dose of sobriety into the consideration of a problem which is complex

and, for the Chinese side, very arduous. I believe the record indicates that the Chinese will find it difficult to raise their hard currency commodity exports to heights consonant with the level of imports desired by them at this time.

Service income includes tourism and hard currency remittances from overseas Chinese. The latter fluctuate over time, roughly in line with China's policy toward the relatives in China of overseas Chinese. In recent times, such remittances came to about \$500 million a year. The new regime's policy on overseas Chinese and their families in China is benign. As long as this lasts, remittances are likely to continue at or exceed current levels. Before tourism amounts to very much, \$1.5 billion will have to be invested in 15,000 new hotel rooms. It is interesting to note that in recent months the People's Republic of China (P.R.C.) has increased her involvement in real estate speculation and hotel ownership in booming Hong Kong.

China's past loan repayment record has been exemplary and on the basis of this performance, the country has an excellent credit rating in the world financial community. In the past China pursued a very conservative foreign credit and balance of trade policy which, as much as anything else, explains the spotless credit history. The policy, now decried by the Chinese authorities, had been to shun joint ventures and long-term indebtedness to foreign banks and governments, and to avoid overall balance of trade deficits. If in any one year a sizeable deficit on the trading account developed, it would be reversed in subsequent years by the simple expedient of slashing imports. In general, until the fall of the Gang of Four, foreign trade was regarded by the Chinese authorities as a residual activity. China went out and bought what she could not make at home, paying with such exports as it could manage to push. Today, the picture is quite different. Foreign trade is taken to be the key link in the modernization process; it is to be actively promoted in the years to come; and a flexible attitude toward credit and other arrangements is to replace the rigidities of the past.

China's credit history is not necessarily a reliable indicator of China's future credit performance. This is not to suggest that the P.R.C. will massively default on her obligations or that she takes such obligations lightly. But China's present borrowing plans bear little relationship to past practice and must be examined on their own precise merits. This cannot be done unless the Chinese authorities release fuller information than they have done so far on their assets, liabilities, reserves and debt service ratios. If China wants to participate in the world economic community, she should be made to understand that continued obsessive secrecy regarding her economic performance constitutes unacceptable conduct. Are Chinese foreign exchange reserves \$2 billion (as reported by the *Christian Science Monitor* on March 28, 1979) or are they \$4 billion (as reported by the Bank for International

Settlements)? Both figures should be set against the tentative \$7 billion in equipment and technology import contracts signed by early 1979.

A whole profitable breed of consultants with allegedly "inside" information has been spawned lately in and around Washington and New York to help American China traders find their way in the dark. Estimates (they are usually referred to as "informed" estimates to lend them a degree of dignity and credibility) of Chinese import plans between 1978 and 1985 range from \$40 billion to \$200 billion — not a very informative range. In 1976, it was estimated that China had a debt service ratio (ratio of foreign repayment obligations to total hard currency earnings) of twenty-three percent, not far from the warning mark of twenty-five percent. A later U. S. government study predicted that the ratio between 1981 and 1985 would range from four to eleven percent and if downpayments are included, the upper limit would be as high as fifteen percent. Later, a figure of twenty-one percent was mentioned for the same period. Statistics *à la carte*; something to suit every taste.

The Chinese make up for the statistical confusion by being the world's most gracious hosts, when they decide to be so. But impeccable manners and hearty fellowship do not make up for the absence of good information flows. That is why I do not go along with the advice given by one U. S. executive (who has had twelve months' experience of dealing with the Chinese). He suggests to "shy away from legalese" and "laugh with them." If I am not mistaken, some such suggestions have also been floated at this Conference. Chinese culture, it is argued, is not our culture. The Chinese (at least on the mainland) dispense with all our "whereas'es" because things are just understood and taken for granted over there, and there is no need to spell them out. You might even offend the chaps by insisting too much on insurance claims when you lend them a billion dollars here and there.

ABILITY TO ABSORB

Absorption of advanced technology and equipment has four aspects: technical, institutional, political and cultural. The degree of absorption difficulty varies with the degree of technological sophistication, the size of the transfer and the time span allowed for digesting the new equipment and techniques. The more advanced the technology, the more massive the transfer; the shorter the time in which that transfer is to be accomplished, the greater the absorptive difficulty. Technically, there seems to be little point in importing high technology equipment when supporting services are lacking. It is useless to import a computer when you do not have computer operators or buy a tractor when you do not have tractor drivers, mechanics or repair facilities. Technology, like economic planning, is an integrated process,

not a series of random stabs. I believe that it is precisely in the area of the needed technological linkages that contemporary China is weak. The weakness can be overcome, but not in the time period assigned by the plan.

Institutionally, the question is whether the economy's arrangements are capable of supporting the vast modernization effort. I have discussed this problem elsewhere,² and will only mention three factors: poor planning, poor incentives to workers and poor management. The deficiencies of planning have already been noted.³ Deficient incentives to workers (resulting in a loosening up of "labor discipline") are admitted by the present leadership. To properly motivate the workers — *i.e.*, spur them to use the new equipment and techniques in ways that will raise factor productivity calls for nothing short of a wholesale revision of the wage and rural incomes structures, both as regards the general level of earnings and income differentials. More consumer goods will have to be provided, without which increases in money incomes (already ordered) only make things worse. (Inflation is presently running at about ten percent a year in China.) Raising output by massive organizational means (mass mobilizations of labor) is losing its effectiveness, as are appeals to the workers' sense of moral responsibility, class consciousness and patriotism. The shabby spectacle at the top is not likely to invigorate the masses' flagging moral commitment to socialism. One of the most worrisome problems is sloppy enterprise management, not because of any particular lack of ability among the managerial cadres (although this, too, is a problem with the graduates of the Cultural Revolution), but because of chronic dialectical exercises and the consequent uncertainty of the political line at the top. Managers are paralyzed by fear that what they do today may be used against them tomorrow. There are solid historical grounds for this apprehension. The result is managerial inertia.

Politically, absorption hinges on whether the present modernizing regime will survive the plan it has set for the country. There are signs of rift within the leadership, and the possibility of a return to some of Mao's more obscurantist policies cannot be altogether excluded.

Finally, there is the question of whether China will be able to make the cultural adjustments necessary for the enormous leap into modernity. Massive transfers of advanced technology over brief periods of time have been known to unsettle some developing societies in various parts of the world. It is true that in the last thirty years China was subjected to great cultural transformations and huge value upheavals. Still, the magnitude of the proposed changes, their high technological content and the briefness of time

2. Prybyla, *Changes in the Chinese Economy: An Interpretation*, ASIAN SURVEY 409-53 (May 1979).

3. See *supra* at 47-48.

allotted to the process will surely put much strain on the fabric of China's rural society.

All these considerations, diverse as they are, seem to be highly relevant to our gaining a balanced perspective of China's modernization, her foreign trade prospects and the value to the United States of the China economic connection.

CHAPTER VI.

LEGAL ASPECTS OF THE NORMALIZATION PROCESS: SELECTED ISSUES

*Mark B. Feldman**

The subject of my talk is the Claim/Assets Agreement and the question of termination of treaties, a constitutional issue focusing on the termination of the China Defense Treaty. I shall begin by considering the Claims/Assets Agreement¹ — the Agreement that was initialled by Secretary Blumenthal on March 9, 1979 and signed by past Secretary Kreps on May 11. On the one hand, this was a settlement of claims that American citizens had for the taking of property as a result of the Chinese Revolution, and on the other, of claims that China and its citizens had against the United States arising out of the blocking of Chinese assets in the United States as part of the Treasury Department program that followed the hostilities in Korea. Under the agreement, China agreed to make a payment in cash of \$80.5 million in full and final settlement of the property claims. On October 1, 1979, \$30 million was to be paid and the balance would be paid in five equal installments of \$10.1 million each year thereafter on October 1. The United States, for its part, agreed to unblock by October 1, 1979 all the assets frozen under the China assets program.

To put this agreement into perspective, we started with \$192 million in claims adjudicated by the Foreign Claims Settlement Commission², settling for \$80 million in payment of those claims. From the point of view of American claimants, that does not look very great. It averages about 40¢ on the dollar with no interest payment and no inflation factor. From the Chinese point of view, however, I imagine that looks like a very substantial contribution to normalization. It represents a lot of money for a country that has limited foreign exchange assets. After all, they had no part in the unilateral process by which those claims were adjudicated and told us very firmly that they did not accept those figures at all. From the American view, if one looks at the payment terms — the fact that there is no assignment of

* Deputy Legal Adviser, Office of Legal Advisor, Department of State.

1. *Agreement Between the Government of the United States of America and the Government of the People's Republic of China Concerning the Settlement of Claims*, 17 INT'L LEGAL MATS. 551 (1979). For text, see Appendix-Selected Documents p.131 *infra*.

2. The Foreign Claims Settlement Commission of the United States, a domestic agency created in 1954 by the President's Reorganization Plan No. 1 of 1954, is a permanent body to which there can be assigned jurisdiction over claims of the United States and its nationals under any claims agreement.

assets, that the money is paid in cash over a short period of time compared to other settlements with communist countries in Eastern Europe — the settlement looks quite favorable.

The question naturally arises: why were we able to achieve a settlement as satisfactory as this one? I think the key probably lies in the Chinese analysis. They regarded this issue as a matter of no great significance. The Secretary of the Treasury had made it very clear, however, that although this was not a major matter, it was a matter that had to be settled. Settlement of this question was an absolute precondition to moving forward with the normalization of economic relations between our two countries. The Chinese understood and accepted this as a matter of political reality. They felt that this settlement would not be significant over a long term compared with the benefits of technology, capital and trade that they would receive through normalized relations.

There is one last point I would like to discuss on the Claims/Assets Agreement, and that is the only other commitment we made. The United States has agreed to try to collect certain information and to provide assistance to the Chinese in identifying their blocked assets to the extent we can do so, consistent with U.S. law and policy. This is not an open-ended undertaking, but we will do the best we can under the circumstances. The legal problems facing the holders of assets and those who try to collect the assets will be substantial.

I would like to turn now to the termination of the Defense Treaty with the Republic of China.³ On Wednesday, June 6, 1979, Judge Gasch issued a decision on the Government's motion to dismiss the complaint, and the Senate of the United States also took action on the same issue. The Judge concluded that Senator Goldwater, and the other congressional and senatorial plaintiffs associated with him, lacked standing at this time to bring the action challenging the legality of the President's notice of termination. He concluded that they had not demonstrated the necessary injury in fact to establish standing because they had an alternative remedy which had not been exhausted in the Senate and in the Congress of the United States. The opinion has a lengthy discussion of the facts and of standing. Then, in a very very brief paragraph, Judge Gasch intimated that he believed that the power to terminate treaties is a power shared by the political branches of this government, namely the President and the Congress. Since the plaintiffs' rights were derivative from the institutional interests of the Senate and the Congress as a whole, and the Congress had not yet asserted its prerogatives in this particular context, plaintiffs had to seek a remedy in Congress. If the

3. Mutual Defense Treaty Between the United States of America and the Republic of China, [1954]. 6 U.S.T. 433, T.I.A.S. No. 3178.

Congress or the Senate were to ratify, in effect, the termination, the case would be moot. On the other hand, the judge implied that if they took measures falling short of that, then the issue would be ripe for judicial disposition.⁴

Since the decision was based on the lack of standing the opinion does not address many of the difficult issues. First, there is no discussion of the political question doctrine which occupied a large portion of the briefs on both sides. There is no discussion of diplomatic recognition or presidential power incident thereto. There is no analysis — not even a mention — of the substantial question relating to the differences or similarities between the law-making power and treaty-making power. In addition, the treatment of the precedents, which is extremely brief, does not address the issues developed in the briefs.

In the meantime, the Senate Foreign Relations Committee, with the help of Professor Henkin, reported out a resolution, which was a very sophisticated, comprehensive treatment of the subject of treaty termination. Among other things, it recognized that there is a large area of executive responsibility in treaty termination with which the Congress could not effectively compete. Such situations include an executive judgment as to the continued validity of a treaty because of changed circumstances, material breach, some change in the character of the parties, or other reasons which would result in the suspension or abrogation of treaty obligations without formal termination of the treaty.⁵ The proposed resolution asserted, on the other hand, the Senate's prerogative, disputed by the Executive branch, to attach to any particular treaty a reservation or condition requiring advice and consent of the Senate to treaty termination. That does not do full justice to the resolution, but it gives an idea of its scope and thrust.

Senator Harry Byrd moved to substitute his original resolution which stated the belief of the Senate that its advice and consent is required to terminate any mutual defense treaty. That motion to substitute the original resolution for the one reported by the Committee was carried by a very substantial majority, 59-35. Although this action was not the final vote, certain concerns were raised, both with respect to Judge Gasch's opinion and the whole problem of normalization of relations with the People's Republic of

4. For a discussion of the *Goldwater v. Carter* decision, see p. 68 *infra*.

5. The Restatement of Foreign Relations Law suggests that an international agreement may be terminated in accordance with provisions included for that purpose in the agreement, by consent of the parties, by hostilities between the parties, by violation of the agreement, or by the disappearance of a state. *RESTATEMENT OF FOREIGN RELATIONS LAW OF THE UNITED STATES* § 159-63 (Proposed Official Draft, 1962).

China. Senator Church then introduced an amendment to the Byrd resolution which would exclude from the scope of the resolution any notice of treaty termination transmitted prior to the adoption of the resolution. That amendment was not voted on; it will be voted on on Monday and then the resolution itself will be brought to a vote. The case in the District Court might turn on the action that the Senate takes. We are confident, however, that whatever action the Senate takes on Monday, Presidential power to terminate the Defense Treaty with Taiwan will be confirmed on appeal.

I would like to discuss very briefly some of the main lines of the argument. The Constitution is silent on the question of treaty termination. There is no constitutional history that is very helpful. There are no adjudicated cases that dispose of the issue. So the main sources of legal argument, apart from constitutional exegesis, are the views of the commentators and treaty practice. The authorities who had written on this subject at the time the President had to make his decision were almost unanimous in support of presidential power in this area.⁶

Even though the Constitution is silent on this issue, it is striking how small a problem it has been in the development of our political democracy. In some ways the issue is not nearly as important constitutionally as some people make it out to be. We have had, by plaintiff's count, fifty-odd incidents of treaty termination out of thousands of international agreements made over the years. By our count we have had half that many. The difference is because, in one case, a statute forced the termination, effectively, of twenty-five treaties based on one legislative action. Of the twenty-five incidents that we count, twelve were taken by executive action without any authorization by Congress or by the Senate. Ten of the twelve occurred in the twentieth century beginning with President Coolidge and several treaties were terminated in the Roosevelt administration.

So we think the treaty practice, such as it is, supports our position. I find it difficult to understand how the Supreme Court could reach a different conclusion on that point. There are, however, other considerations that are more compelling in this particular case and in terms of treaty termination generally. It is uncontested that the President in his constitutional authority for the conduct of U.S. foreign relations has unqualified power to determine questions of recognition and diplomatic relations.⁷ If there is any area of

6. *Id.* at § 167. See also the various works of Professor Myres S. McDougal, Sterling Professor of Law, Yale Law School.

7. U.S. CONST. art. II, § 3.

Presidential power which is exclusively that of the President, it is that area. As you all know, the Supreme Court in the *Belmont*⁸ and *Pink*⁹ cases, following the resumption of diplomatic relations with the Soviet Union and the *Litvinov* assignment, concluded that the recognition power extended to the point of authorizing an executive agreement which overrode Fifth Amendment property interests and the public policy of New York State respecting the extraterritorial applications of foreign expropriation decrees.

Although the State Department believes those cases are good law, we do not have to prove so much in this case. This treaty is a defense treaty. Termination does not involve any property interests; it does not involve questions of state law; it does not involve any self-executing provisions affecting private rights. It involves a political issue at the heart of the foreign affairs and defense powers of the President. Moreover, the treaty in Article X provides for termination on one year's notice by either party. Therefore, our view is that when the Senate gave its advice and consent to ratification, it understood that the treaty could be terminated in the normal way treaties had been terminated in this century — by Presidential action. The President is responsible for executing the law; he administers and implements treaties. One aspect of treaty administration ought to be providing the notice of termination as authorized by Article X of the treaty.

Of course, there is another side to the question. The basic thrust of the argument on the other side is that the President cannot terminate legislation without the consent of the law-making body. Therefore, he should not be able to terminate treaties without the consent of the body that participated with him in making the treaty. The argument becomes a little difficult because the plaintiffs have the burden of showing how the Senate can take any legal action without participation of the House except as expressly provided in the U.S. Constitution. Some people think the better procedure is action by a joint resolution of both houses, signed into law by the President, but the House has no constitutional role in treaty making and can claim none in treaty termination.

There is a more basic analysis. Treaty power and law-making power are two very different functions under the Constitution. Congress is the primary actor in the law-making power. The President has only the veto which Congress can override. In the case of treaties, it is the other way around. The President decides when to negotiate and when to conclude a treaty. Once the advice of the Senate is given, it is the President who decides whether to proceed to ratification and when to do so. In our view he also has the authority to terminate the treaty.

8. *United States v. Belmont*, 301 U.S. 324 (1937).

9. *United States v. Pink*, 315 U.S. 203 (1942).

There is a further question — a distinction that can be made between this treaty and other treaties. It is conceivable that there might be a treaty which is the supreme law of the land in the sense of Article VI of the U.S. Constitution that establishes private rights which affect property interests and other private rights. Those considerations are not relevant here where you have a treaty which operates only in the international sense. It is ironic that some of those who now question the President's authority to terminate a defense treaty are the very people who question the Congress' power to limit the President's ability to make war.

COMMENTS

*Senator Bob Dole**

Any westerner attempting to understand China is confronted with a culture and philosophy far different from his own. Seemingly routine questions become complex issues and for this reason, China remains an enigma to the West.

Though difficult, understanding and dealing with China has been crucial to the United States ever since we began to look beyond our own borders over a century ago. Having tried to ignore the People's Republic of China (P.R.C.), we have isolated ourselves from one quarter of the world's population. The time has come to direct our energies to seizing every opportunity for building constructive U.S.-Chinese relations. It is imperative that this involve both the P.R.C. and Taiwan; this is the only way by which we can incorporate all the global realities with which we must deal, and which are vital to our national interests.

The Administration made the mistake of muddling together the two separate issues of normalization of relations with the P.R.C. and our continued relationship with Taiwan. While properly recognizing the benefits of normalization, President Carter failed to take into account the consequences of breaking off relations with Taiwan. Congress was left to do what it could to rectify the errors made by the President. In order to see the separate issues involved, I would first like to discuss normalization and then the Taiwan issue. I will follow with an outline of how the Congress was able to

* Republican Senator representing the State of Kansas.

make the best of the resulting situation, concluding with a reflection on the lessons learned in the process.

Normalization of relations with the P.R.C. is highly desirable, but it is neither a panacea for our problems with the Soviets, nor a guarantee of stability in Asia. While normalization has much to recommend, a frank discussion must also address the limitations of its merits.

One of the often cited benefits of normalization is the value of this U.S.-China "alliance" in strengthening our bargaining position with the USSR. Normalization does give us added flexibility in dealing with the Soviets, but it would be foolhardy to use this "alliance" as the cornerstone of our policy towards the USSR. There are two factors which must be considered when estimating the worth of the "China card." The first of these is the instability of Chinese politics, evidenced by the repeated purging of Deng Xiaoping, the architect of normalization. The second factor which must not be forgotten is that our interests will not always coincide with those of the Chinese, nor will they necessarily be in opposition to those of the USSR.

Given these factors, it would be prudent to recognize that the "China card" is an "ace in the hole" only occasionally and is dependent on the game in play. The "China card" should be utilized as effectively as possible, but we must remain cognizant that at any time it could become inoperative.

A second welcome benefit of normalization is the increased opportunity for U.S.-China trade and the concomitant understanding between our peoples that more frequent interaction will bring. The Chinese market offers tremendous long-range potential deriving from two sources. The Chinese market is both huge (one quarter of the world's population) and desperately in need of western technology. While cultivating the P.R.C. market, however, we must not lose the Taiwan market, currently seven times larger than the former.

While the benefits of normalization are indeed considerable, President Carter's decision to sever diplomatic relations with the Republic of China (R.O.C.) has some far-reaching consequences. Perhaps the worst part of the Administration's China move was the manner in which it was done. Last year I introduced the Dole-Stone amendment along with Senator Stone of Florida. This amendment, which passed the Senate by a vote of 94-0 and was subsequently signed into law,¹ expressed the sense of the Congress that the executive branch should consult with the Senate prior to any policy changes affecting the Mutual Defense Treaty of 1954 with the Republic of China.² By conducting the negotiations with the P.R.C. and agreeing to terminate the

1. Pub. L. No. 95-384, 92 Stat. 746 (1978).

2. [1955] 6 U.S.T. 433, T.I.A.S. No. 3178.

Mutual Defense Treaty without consulting the Congress, the President directly contradicted the will of the Congress and the law of the land.

The repercussions from abandoning a loyal and consistent ally are staggering. The decision to abandon Taiwan seriously undermines our credibility in other countries which are dependent on U.S. support. When this action is coupled with the Administration's lack of resolve in Iran and its plans for withdrawal of troops from Korea, it is no wonder that our allies have begun to question our commitment. We have always tried to honor our agreements, and any nation which conscientiously upholds its agreements with us, as the Republic of China has done, has the right to expect that these agreements will not be terminated unilaterally and without warning. Unilateral termination of this kind hardly befits the leader of the Free World.

Since coming into office, President Carter has repeatedly vowed to protect human rights. By leaving Taiwan in the lurch, he sacrificed the rights of the Taiwanese people for the sake of expediency. Taiwan is a sovereign nation and as such, the rights of the people of Taiwan should be protected. A people who have struggled for thirty years to maintain their freedom deserve strong support from the leader of the Free World.

President Carter received no concessions from the P.R.C. in return for normalization. The terms to which he agreed were available to Presidents Nixon and Ford. Indeed, the President's actions in the normalization are a textbook lesson in how not to negotiate. This refusal to seek significant concessions is made more disturbing by its regularity. The same type of unilateral concession has been seen, vis-à-vis the Soviet Union, in the cancellation of the B-1 bomber, the deferment of the MX missile and neutron bomb, and the decision to withdraw troops from Korea. This error was compounded by not consulting the Congress in contravention of the Dole-Stone amendment and by breaking relations with the R.O.C. when the Congress was not even in session. As a result, Senator Goldwater filed a suit, which is still outstanding, contending that the termination of the Mutual Defense Treaty without the advise and consent of the Senate was illegal³. While I concur with Senator Goldwater, as evidenced by my introduction of a resolution condemning the President's actions, I chose to pursue a legislative, rather than a judicial remedy.

Presenting the normalization package to Congress, President Carter attempted to convince the legislature that it should not be tampered with. Fortunately, the Congress insisted on several amendments which have

3. For a discussion of the Goldwater v. Carter decision, see p. 68 *infra*. See also text of the Feldman article *supra* at 55.

succeeded in making the best of a bad situation. These amendments might not have been necessary if the Senate had been involved in prior consultation. Obviously, the Administration had no idea of the degree of opposition its legislative package would encounter.

The initial Taiwan legislation submitted by President Carter had three major shortcomings: a) it was not clear that we could or would intervene in the event of a threat to the R.O.C.; b) while the P.R.C. indicated it would not use force to unify the mainland and Taiwan in the near term, the inimical effects of economic and political coercion were not recognized; and c) the provisions for governmental relations between the United States and Taiwan were weak and detrimental to our continued relationship in the future.

When the Congress first convened in January, I proposed two bills dealing with Taiwan. The first of these, Senate Resolution 13,⁴ made certain security guarantees to the R.O.C. that it would not be abandoned by the United States. The bill expressed the sense of the Senate that:

1. The United States does not condone the use or threat of force to unify the P.R.C. and the R.O.C.;
2. The United States does not recognize the right of either the P.R.C. or the R.O.C. to use the threat of use of force to subvert the other;
3. The United States should assist the R.O.C. against any act of aggression directed against it by the P.R.C.;
4. The United States should interpret any interference with commercial, cultural, military or economic assistance programs between the United States and the R.O.C. as an unfriendly act and should react accordingly; and
5. The United States should attempt to prevent the expulsion of the R.O.C. from international organizations.

Though Senate Resolution 13 was never enacted, many of its provisions were incorporated into the Taiwan Enabling Act.⁵

The Congress made it explicit in the Taiwan Enabling Act that we will continue to guarantee the security of Taiwan. While this is not as strong a guarantee as the Mutual Defense Pact, it does provide assurances that Taiwan will continue to be defended against an attack from the mainland. Furthermore, this U.S. guarantee would include attempts by the P.R.C. to

4. S. Res. 13, 96th Cong., 1st Sess. (1979).

5. S. 245, 96th Cong., 1st Sess. (1979). The House version of the bill was subsequently passed into law. Taiwan Relations Act, Pub. L. No. 96-8, 93 Stat. 14 (1979). See Appendix-Selected Documents p. 116 *infra*.

topple the Taiwanese government through economic and political coercion. This ensures that the P.R.C. will not be able to dominate Taiwan by trade boycotts or by excluding it from international organizations vital to its continued relationships and commercial transactions with the rest of the world. The second bill I introduced, Senate Bill 8,⁶ would have authorized the President to extend diplomatic privileges and immunities to any principal liaison office established by the R.O.C. in Washington. Again, though this legislation was not enacted, the goals it sought were met. The language regarding U.S.-Taiwan relations was strengthened so that we have official relations in all but name. Though I still am not convinced that President Carter bargained with sufficient diligence on this issue, I do believe that the Congress has made the best of a poor situation. In all, our relations with Taiwan will be conducted much as they once were.

In order to outline the process by which the Foreign Relations Committee's new version of the Taiwan Enabling Act was amended during floor debate by the Senate, I would like to cite some of the amendments I proposed. Some of these were adopted, some were rejected, some were combined with or dropped in favor of similar amendments by others, but all contributed to the process of making an acceptable agreement. Through this process, many members of the Senate were able to substantially alter the terms of the Acts, thereby strengthening ties with Taiwan.

The first of these amendments would have substituted the word "Taiwan" for the words "people of Taiwan" throughout the bill. This amendment would have corrected an unnecessary pretense that we are not dealing with a legal entity or government on Taiwan. The rejection of this amendment does not alter the fact that the government of the Republic of China is a legal entity, for facts cannot be altered merely by being unrecognized.

I merged several of my amendments with similar ones by other Senators. This strategy illustrates how the spirit of compromise works in the legislative process to build a mounting consensus. By lining up support behind worthy amendments, rather than quibbling over irrelevant details, the Senate brought about important changes. Such amendments included specifications that the United States will oppose the use of economic coercion to subvert the R.O.C. and attempts to expel the R.O.C. from international organizations.

I cosponsored with Senator Hollings an amendment which guarantees that "Twin Oaks," the former site of the R.O.C. embassy in Washington, will continue to belong to the R.O.C. The adoption of this amendment ensures the preservation of this living symbol of the friendship between the United States and Taiwan.

6. S. 8, 96th Cong., 1st Sess. (1979).

In an attempt to provide for Congressional input into the American Institute in Taiwan, I proposed that the Director's appointment be subject to the advice and consent of the Senate. This was proposed with the aim of safeguarding the principles of advice and consent set forth in the Constitution. The tabling of this amendment was indeed unfortunate in view of this Administration's record on Taiwan.

In order to keep the Congress informed on the security of Taiwan, I proposed an amendment requiring the President to report to the Foreign Relations Committee all requests for arms sales from the Taipei authorities. The passage of this amendment guarantees congressional oversight in this vital matter regarding the physical security of Taiwan and our own national security interests.

A final source of concern to me is that the P.R.C. has signed neither the Nuclear Test Ban Treaty⁷ nor the Nuclear Non-Proliferation Treaty.⁸ I have introduced a bill, which stipulates that any nonmarket-economy nation which has not signed these treaties will not be afforded most-favored nation treatment.⁹ China continues as the only nation in the world that engages in atmospheric explosions since France stopped in 1974. Fallout from Chinese nuclear explosions has periodically endangered the health of the people of the United States. Similarly, there is a responsibility to prevent the proliferation of nuclear arms. We in the Congress have an excellent opportunity to express to China and the world our firm resolve and sincere belief in the international efforts towards arms control and nuclear non-proliferation. We should capitalize on this opportunity since a similar one may be long in coming.

Our recent experience in the Chinese arena presents us with a foreign policy lesson but it remains to be seen if it has been learned. The art of compromise calls for concessions from all sides. It is not a good bargaining technique to enter negotiations with a determination to meet your opponent's demands without getting significant concessions in return.

Foreign policy must be perceived as a cohesive whole. Failure to take into account all factors involved can result in grievous errors. On all matters in which the eventual participation of the Congress is requisite, prior consultation can eliminate much controversy and aid in the formulation of better policy. Despite dire warnings to the contrary by the State Department, the Senate insistence on stronger language in our legislative commitment to Taiwan was, in fact, accepted by the People's Republic of China. This

7. [1963] 14 U.S.T. 1313, T.I.A.S. No. 5433, 533 U.N.T.S. 365.

8. [1968] 21 U.S.T. 483, T.I.A.S. No. 6839.

9. S. 417, 96th Cong., 1st Sess. (1979).

experience has shown how Congressional input may result in better policy, fewer setbacks to Administration goals and greater security for long-term national interests.

COMMENTS

*Senator John Glenn**

When President Carter decided to normalize relations with the People's Republic of China (P.R.C.), neither Senator Glenn nor anyone else in the Senate was consulted. All of the Senators had previously been briefed and consulted on the fact that normalization with the P.R.C. was the U.S. negotiating position. Most of them, including Senator Glenn, agreed with that position, with the provision that the P.R.C. would renounce the use of force against Taiwan. The United States did not, however, ask for the P.R.C. to renounce the use of force in the final negotiations. Senator Glenn was informed about the normalization and this significant provisional change two hours before the announcement by the President. He was *told* — *not* consulted.

Once that had happened, Senator Glenn took a very pragmatic approach to this problem. Everyone recognizes the President's role in foreign policy of recognizing governments. At that point, Senator Glenn's whole strategy was to try to get the best treatment for Taiwan that could be obtained after negotiations with the P.R.C. by the executive branch.

From Senator Glenn's perspective on the Committee on Foreign Relations, the Taiwan Enabling Act submitted by the Executive Branch was very flawed. The general comment from the lawyers on the committee was that there were great problems with the Bill, especially with the ambiguity of some of its parts. Additionally, it was agreed that the Bill had been drawn up in haste. There were a number of issues, particularly in the economic area, that just had not been covered at all. Everyone on the committee, and particularly Senator Glenn, feels that the lawyers (Victor Li for one, who was brought in as a consultant to the Foreign Relations Committee, as well as a whole host of Washington law firms)

* Democratic Senator from the State of Ohio. Senator Glenn's presentation was made by Carl Ford who is a professional staff member on the Senate Committee on Foreign Relations.

played a vital role in trying to straighten out what was clearly a difficult problem with the economic sections of the Bill. Examples are the definition of the "people on Taiwan," and a number of other provisions that were written, not by the committee, but by legal scholars and law firms who were brought in by the Committee at the last minute to try to work out some of these problem areas. The most convincing argument was made by a lawyer from American Chamber of Commerce in Taiwan, who made a very strong and emotional pitch for the need for refinements and fine tuning in the Bill's provisions. Thus, with the help of the legal community, Congress greatly improved the bill.

From the perspective of Senator Glenn's staff, the important role for us now is congressional oversight and to insure that the Taiwan Institute and the American Institute in Taiwan works. There have been similar institutions developed by the Japanese and other countries but the Institute is a new venture for everyone. Many problems will arise that we did not foresee when the Enabling Act¹ came before the Senate and the Congress. Also to be worked out are some economic problems in terms of trying to talk with the Taiwanese. The Senator plans to have hearings and in December or January will probably initiate a Subcommittee² investigation of the Institute to see how it is doing so far.

1. Taiwan Relations Act, Pub. L. No. 96-8, 93 Stat. 14 (1979). See Appendix-Selected Documents p. 11 *infra*.

2. Subcommittee on East Asian Affairs.

**NOTE: PRESIDENTIAL POWER TO TERMINATE TREATIES
WITHOUT CONGRESSIONAL ACTION**

*Goldwater v. Carter, 100 S. Ct. 533 (1979)**

On December 23, 1978, President Jimmy Carter, through U.S. Deputy Secretary of State Warren Christopher, gave unilateral notice of termination of the 1954 Mutual Defense Treaty¹ with Taiwan [hereinafter referred to as the Treaty], to be effective January 1, 1980. The decision was made without the advice and consent of the Senate or the approval of both Houses of Congress.² Consequently, declaratory and injunctive relief was sought by eight members of the Senate, a former Senator³ and sixteen members of the House of Representatives to bar termination of the Treaty. The plaintiffs contended that President Carter's unilateral notice of termination violated their legislative right to be consulted and to vote on the Treaty's termination, thus impairing the effectiveness of their original votes approving the Treaty.

In an opinion authored by Judge Gasch, the U.S. District Court for the District of Columbia on October 17, 1979 held that the advice and consent of the Senate or the approval of both Houses of Congress was necessary prior to the termination of the Treaty.⁴ The Court rejected the President's jurisdic-

* The following is a summary of the litigation history of *Goldwater v. Carter*. At the time the Conference was held (June 8-9, 1979), the termination of the Mutual Defense Treaty with Taiwan was a prominent issue. On June 6, 1979 — only a few days prior to the start of the Workshop — the District Court for the District of Columbia denied the plaintiffs' request to bar the termination of the Treaty, finding that the plaintiffs had not suffered the requisite injury in fact to maintain standing. Thereafter, on October 17, 1979, the District Court granted the plaintiffs' motion to alter the June 6th judgment and reversed its earlier decision. This summary will focus upon the October 17th judgment, the subsequent Court of Appeals decision and finally, the U.S. Supreme Court's grant of certiorari.

Editor's Note: This note is not an extensive analysis of *Goldwater v. Carter* but rather an outline of the major issues involved in the case as well as a description of the events which transpired prior to the U.S. Supreme Court's disposition of the case.

1. [1954] 6 U.S.T. 433, T.I.A.S. No. 3178.

2. U.S. CONST. art. II, § 2: "The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur . . ."

3. The District Court ruled that former Senator Curtis did not have standing to be a plaintiff in this suit. *Goldwater v. Carter*, No. 78-2412, slip op. at 2, n.1 (D.C. Cir. October 17, 1979). Senator Curtis argued that the effectiveness of his prior vote in approving the Mutual Defense Treaty was impaired by President Carter's termination of the Treaty. In ruling otherwise, the Court stated, "An interest in ensuring enforcement or the proper administration of laws for which a legislator has voted is insufficient to confer standing."

4. *Goldwater v. Carter*, No. 78-2412, slip op. (D.C. Cir. October 17, 1979).

tional challenges before reaching the merits of the case, namely, that the plaintiffs lacked the requisite injury in fact to maintain standing and that the issue of treaty termination is a nonjusticiable, political question.⁵

Ruling that the plaintiffs had standing to bring the suit, the Court noted the criterion for standing⁶ and focused on the injury in fact requirement.⁷ The Court recognized the rule, established in *Kennedy v. Sampson*,⁸ that congressional standing is "based upon the right of each individual legislator to participate in the exercise of the powers of the institution."⁹ A member of Congress has suffered an injury in fact if he can show such an injury to the institution of Congress and as a consequence, has been injured as an individual legislator. Applying this rule, the District Court decided that Congress' inability to vote on the termination of the Treaty constituted the requisite injury in fact to the institution and the individual legislators.¹⁰

The Court then turned to the justiciability challenge and rejected the President's assertion that the termination of the Treaty was a political question within the textual commitment test of *Baker v. Carr*.¹¹ Since the Constitution is silent as to which branch of government is to terminate treaties, the Court found no "textually demonstrable constitutional commitment" upon which to base an inference that the executive had sole authority to terminate the Treaty.¹²

5. *Id.* at 3.

6. The requirements for standing are: "1) injury in fact; 2) the interest asserted is within the zone of interest to be protected by the statute or constitutional guarantee in question; 3) the injury was caused by the challenged action; and 4) the injury is capable of being redressed by a favorable decision." *Harrington v. Bush*, 553 F.2d 190, 213-14 (D.C. Cir. 1977).

7. The President did not claim that the plaintiffs failed to meet the other three standing requirements. *See supra* note 6.

8. 511 F.2d 190 (D.C. Cir. 1974). *See supra* note 4, at 4.

9. *Id.* at 5.

10. *Id.*

11. 369 U.S. 186 (1962). Under the test of *Baker v. Carr*, a case is held to involve a political question if there is

a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

369 U.S. at 217.

12. *Supra* note 4, at 15.

The Court addressed the merits of the case after disposing with the above jurisdictional issues and held that the power to terminate a treaty is not within the executive powers of the President.¹³ Rather, the conduct of foreign relations is a power shared by the executive and legislative branches.

This conclusion is dictated by several constitutional factors: the status of treaties as the supreme law of the land, together with the obligation of the President to faithfully execute those laws; the implications to be derived from the constitutionally delineated role of the Senate in treaty formation; and the fundamental doctrine of separation of powers.¹⁴

Since a treaty is the supreme law of the land, termination of a treaty becomes equivalent to the repeal of a law, a legislative, not an executive, function. Any attempt by the executive to abrogate a treaty is therefore contrary to the obligation of the executive to "to take care that the laws are faithfully executed."¹⁵

The District Court also rejected the argument that the President's power to terminate a treaty arises as a necessary adjunct to the power to recognize foreign governments, supported by the landmark cases of *United States v. Belmont*¹⁶ and *United States v. Pink*.¹⁷ *Belmont* and *Pink* involved the propriety of the Litvinov Assignment, an international executive agreement providing that the Soviet claims to Russian assets in the United States would be assigned to the U.S. government and used to settle American claims resulting from Soviet nationalization decrees. Settlement of these claims had become a condition precedent to the establishment of diplomatic relations with the Soviet government. The Supreme Court held that the Litvinov Assignment was valid and superseded New York state laws and policy against confiscation of private property. Mr. Justice Douglas, writing for the Court in *Pink*, ruled that entering into the Litvinov Assignment was a "modest implied power of the President."¹⁸ The District Court ruled that *Belmont* and *Pink* were not applicable to this case.

The power to terminate a mutual defense treaty cannot be described as a "modest implied power of the President." A holding that the recognition

13. *Id.* at 20-22.

14. *Id.* at 24-25.

15. U.S. CONST. art. II, § 3.

16. 301 U.S. 324 (1937).

17. 315 U.S. 203 (1942).

18. *Id.* at 229-30.

power incidentally confers the power to make an executive agreement settling property claims and that such agreement has supremacy over conflicting state laws does not justify an incidental power to terminate treaties without congressional approval. The argument that any executive action becomes constitutional if it is ancillary to an act of recognition is without merit. If limitations imposed by other constitutional provisions exist, the recognition power cannot be used as a "bootstrap" to support the President's unilateral action in terminating the Mutual Defense Treaty with Taiwan.¹⁹

The Court concluded its decision by finding that congressional participation was required for treaty termination and by offering two alternative procedures to follow. Using as a basis the status of a treaty as the law of the land, the first alternative would require the approval of termination by a majority of both Houses of Congress.²⁰ The Congress should have the power to pass a statute which superseded an entire treaty since passage of a statute by the Congress which conflicts with an earlier approved treaty supersedes the treaty to the extent of the conflict.²¹ The second alternative would require the consent of two-thirds of the Senate, a close analogy to the treaty-making power.²²

On November 30, 1979, the Court of Appeals for the District of Columbia in a per curiam decision reversed the District Court upon the merits.²³ The Court held that the President had authority to terminate the Treaty in order to facilitate normalized relations with the People's Republic of China. It would have been unreasonable to hold the United States to the Treaty since Taiwan was no longer recognized as the legitimate government of China.²⁴

Following the Court of Appeals decision, Senator Goldwater filled a petition for certiorari with the U.S. Supreme Court which the Court granted on December 13, 1979. At that time, the Supreme Court gave a memorandum decision, ordering the Court of Appeals' judgment vacated and remanding the case to the District Court with directions to dismiss.²⁵ The effective result of dismissal is to permit the action contemplated by the President — termination of the Mutual Defense Treaty with Taiwan.

19. *Surpa* note 4, at 23.

20. *Id.* at 28.

21. *Id.* at 30, n.70.

22. *Id.* at 29.

23. 48 U.S.L.W. 2388 (D.C. Cir. 1979). In agreement with the District Court, the majority found that the plaintiffs had congressional standing.

24. *Surpa* note 23, at 2389.

25. *Goldwater v. Carter*, 100 S. Ct. 533 (1979).

Mr. Justice Powell, in a concurring opinion, would have dismissed the complaint as not ripe for judicial review since Congress had taken no official action on the notice of termination by the President.²⁶ In a separate concurring opinion, Mr. Justice Rehnquist, joined by Chief Justice Burger, Mr. Justice Stewart and Mr. Justice Stevens, argued that the action was barred since treaty termination is a political question.²⁷ Justice Rehnquist used constitutional silence on treaty termination as the basis for finding the issue to be a political one, directly contrary to the District Court ruling that constitutional silence indicated that the issue was not a political question.

Mr. Justice Brennan was the only justice who approved of the President's termination of the Treaty. Supporting the judgment of the Court of Appeals, he stated

Abrogation of the defense treaty with Taiwan was a necessary incident to Executive recognition of the Peking government, because the defense treaty was predicated upon the non-abandoned view that the Taiwan government was the only legitimate political authority in China. Our cases firmly establish that the Constitution commits to the President alone the power to recognize, and withdraw recognition from, foreign regimes. That mandate being clear, our judicial inquiry into the treaty rupture can go no further.²⁸

Dissenting in part, Justices Blackmun and White would have set the case for oral argument.²⁹ No opinion was expressed on the merits of the case.

David I. Salem
Howard Jack Price, Jr.

26. *Id.* at 533-534. "The Judicial Branch should not decide issues affecting the allocation of power between the President and Congress until the political branches reach a constitutional impasse. . . . If the Congress chooses not to confront the President, it is not our task to do so." *Id.* at 534.

27. *Id.* at 536. "In light of the absence of any constitutional provision governing the termination of a treaty, and the fact that different termination procedures may be appropriate for different treaties, the instant case . . . must surely be controlled by political standards." *Id.* at 537.

28. *Id.* at 539.

29. *Id.*

CHAPTER VII.

IS THERE LAW IN CHINA?

*Jerome A. Cohen**

We really know little about China. Happily, there are only diminishing degrees of ignorance. We do not know much about what is going on in China although a great deal of information about China is regularly collected and analyzed. Sometimes it gives us useful information, but sometimes it tells us relatively little. One cannot be confident that one has control of even the major questions, let alone the detail. We do not, however, remain in a state of ignorance. We know more now, for instance, than we knew during some periods of the Cultural Revolution, and are learning more all the time.¹

Since 1958, there has been in China an absence of indicia of a formal legal system.² If one looks for a universal litmus — or what was thought to be a universal litmus — of the existence of a legal system, or at least a nominally independent legal profession, one has not been able to find it in China. There were so-called “people’s lawyers” in the mid-50s but they were abolished in the beginning of 1958.³ If one looked for legally trained prosecutors, one could not find them in China, especially after the advent of the Cultural Revolution in 1966. If one looked for legally trained judges, one found precious few in China. If one looked for legislation, one found in China

* Professor of Law, Associate Dean and Director of East Asian Studies, Harvard Law School; Specialist in Chinese law and government.

1. The normalization of diplomatic relations with the People’s Republic of China has provided Sinologists and others with an opportunity for study of the Chinese people and their legal development that was non-existent during the chaotic Cultural Revolution.

2. Prior to 1958, Chinese legal developments had roughly paralleled the early years of the Soviet Union. The time between the formal inauguration of the P.R.C. on October 1, 1949 and 1953 was a period of consolidation of political gains. The legal system was oriented towards administering criminal sanctions against class enemies. See J. COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE’S REPUBLIC OF CHINA, 1949–1963, AN INTRODUCTION* (1968). After 1958, whatever legal structure had existed was eliminated or greatly de-emphasized.

3. The first Chinese Constitution was adopted on September 20, 1954. Article 80 of the Constitution provided that the courts were to be equal to the people’s congresses in contrast to their earlier subordination. It should be noted, however, that the “people’s rights” guaranteed by the Constitution did not rest with “Reactionaries” or “class enemies.” Thus, the concept of people’s lawyers must be assessed with some degree of realism in evaluating their brief tenure.

only increasingly slender volumes of statutes which finally came to an end in 1963.⁴ There really has not been a volume of statutes published in China for sixteen years. If one looked for some systematic, hierarchical review system in the courts; public trials that would give people access to understanding the legal system; the publication of law reviews; the publication of legal texts; or legal education, one would find that certainly those things by and large have not existed since 1966. Only shreds, bits and pieces of these elements can be found. In other words, if one looks at the superficial manifestations that one normally associates with a legal system, by and large, they are not there.

To some extent, this may have been a vindication of the dream of some of the early Bolsheviks, among them lawyers, who thought that the advent of a communist regime would lead to a new kind of legal system, one of proletarian simplicity where wise men did not need complex norms to guide them.⁵ They envisioned a system where they could, in accordance with the precepts of the current regime and basic morality, make decisions on the basis of arguments made by the people themselves without professional legal representatives. They believed that industry would not need people to help them interpret the norms by which they operated, and indeed those norms need not be too complicated.

This was vividly brought home to me. In 1965 I remember interviewing a Chinese diplomat in Burundi, Africa who had just defected. I hoped to interview him about international legal training for diplomats. It turned out he was simply a language officer; he had not had any general diplomatic or international law training to speak of. I found myself without much to say to the man who had just come from Shanghai. Finally I said to him, "Well, tell me about lawyers in Shanghai." He looked at me rather quizzically as if to say, "Have you got rocks in your head?" and then he said, "Lawyers in Shanghai? What do you think China is, the Soviet Union?"

We tend to confuse the two great communist giants and assume that there are inevitable similarities between the two that are necessarily striking. And yet, one found, at least since 1958, that China was traveling a

4. The legislation that was promulgated tended to be increasingly omnibus in nature. For example, the Security Administration Punishment Act of the P.R.C. was enacted in October, 1957 to authorize the public security organs to deal with "habitual loafers" and other violators of security administration. What little legislation that evolved in this period was generally designed to give broad powers to the state to punish its enemies.

5. The Soviet legal system, in its base form, subordinates the concept of eternal or natural laws based on ethical precepts to a class-oriented system of legality governed by Marxism-Leninism. See *Manifests to the Communist Party*, in 1 SELECTED WORKS OF KARL MARX AND FREDERICK ENGELS 14-61 (1949-50); and H. KELSEN, *THE COMMUNIST THEORY OF LAW* (1955).

more independent course after almost a decade of attempting to import the formal Soviet legal model that in the post-Stalin era has become increasingly formal, increasingly legal. While this has not brought what we would call the full rule of law to the Soviet Union, it has surely transformed Soviet society in a way that Stalin would not have believed. In China, events went the other way.

Despite this scenario, things are changing. One wonders what would happen if Victor Li were to write a nice little book as he did some time ago, called *Law Without Lawyers*,⁶ today. In recent weeks they have brought back in Peking, and they will soon in other cities of China, lawyers — the lawyers of the mid-50s. The lawyer's society has been revitalized, at least formally. The legal advisory bureaus in which lawyers worked has now been reconstituted in Peking. We are beginning to see this as one of a number of steps to revive the formal indicia of a legal system.

There are many examples. In recent weeks, *The Law Review*, the last of which went out of existence in 1966, has published its first official volume. There was an unofficial, unpublished version of the *Review* disseminated internally in December of last year as a kind of trial balloon. Now, in early May, *The Law Review* has issued its first number. Legal education is off the ground again, although it is going to take a long time to make an impact in China. Peking University Law School is the furthest along in this regard. In 1972 the law department was the only department not yet open. When asked where the law professors were, the authorities would say they were still down on the farm engaging in labor and thought reform. A few months later one of my former students turned up in Peking and the law professors were back.⁷ The student said they were distinguishable from their American counterparts in two respects: they had much deeper suntans and they had a lot less to say. Of course, at that time, they were waiting for the new constitution that would begin to give them the guidelines from which they could again start teaching. Now they are beginning to get those guidelines and the current graduating class at Peking University Law School has eighty students as does the preceding year that will soon graduate its class. People's University Law School has just begun again after almost a decade of inactivity and they have

6. LAW WITHOUT LAWYERS: A COMPARATIVE VIEW OF LAW IN THE UNITED STATES AND CHINA (1978).

7. The Law Schools in the P.R.C. apparently resumed instruction in 1974. According to information obtained by Prof. R. R. Edwards of Columbia University School of Law, major courses taught in post-Cultural Revolution curriculums are: Political Theory, History of the Chinese Communist Party, Theory of Dictatorship, Investigation of Criminal Cases and International Law, to name some of the prominent ones. See, Chiu, *The Judiciary in Post-Cultural Revolution China*, in PROCEEDINGS OF THE FIFTH SINO-AMERICAN CONFERENCE ON MAINLAND CHINA 116-17 (1976).

thirty-eight students in the first year class. That, however, is the only class they have.

But China is a country of one billion people. As one of the law professors said to me, "If we gave China one person with legal knowledge for each county in China, we'd have to graduate 2,300 people right away." So you see, the problem is tremendous if they intend to carry on a legal education program commensurate with China's needs. It is likely those needs will expand because not only are they revitalizing the court system — trying to bring in some genuine hierarchy and orderly review of cases — they are also trying to give legal education to those who would man the court system. The prosecutor's office has been restored which will have to be staffed throughout that vast country. Bringing back lawyers will only increase the need of the system. In addition, for the domestic economic enterprises — which are now being reordered in an attempt to rebuild China's lagging economy and lagging productivity, the lawyers are contemplating having legal advisors in every government enterprise. I am quite confident that if this trend persists, this growing legalization will lead to a similar phenomenon that we witnessed in the Soviet Union. Soon there will be "legal aid" types of activities and lawyers available to people who live on collective farms. It has been announced that all state foreign trade units will have legal advisors. Thus far, the legal bureau of the China Council for the Promotion of International Trade has a very small staff. It is very hard for them to meet the legal needs of the various organizations concerned, even if those organizations are staffed by people who perceive that they have legal needs, which is not always clear in a bureaucracy that has many independent kingdoms.

But the point is very clear. Law is coming back in the sense of an appreciation for the need of people who can "cut the mustard" professionally. And, of course, they want people who can be both red and expert. The problem is how to do it.

Correspondingly, formal legal norms are coming back. There is a legislative process that has recently been reconstituted. The National People's Congress, which is the supreme legislative body and supposedly the supreme political body, is being revived and may, indeed, play more than a mere figurehead role as time goes on. It has a standing committee that has begun to enact legislation. Subordinate to the standing committee is a law committee — a kind of law revision committee that consists of political, academic and practical legal people. The Chinese, however, have found that talent is all too scarce in this regard. The Committee receives drafts that have already been approved by the Political-Legal Committee of the Central Committee of the Chinese Communist Party. In turn, the Political-Legal Committee has received from the various ministries concerned drafts upon

which there has been at least tentative agreement by the bureaucracy. Their process of getting the bureaucracy to agree on what we would call an "executive branch submission" is perhaps even more complicated than our own. In other words, at the national level, there is a law "churning-out" process. At the regional, provincial and local levels, there is a law "churning-out" process consisting of people debating the legitimacy of orders issued by the Public Security Bureau, the City Revolutionary Committee or the executive body for the city.

This process is beginning to bear fruit. It is quite symbolic that the first of these new laws to be emitted has been an arrest and detention act, which is actually a revision of the 1954 law.⁸ This reflects the profound, deeply felt need among the Chinese people, who have suffered terribly, for some degree of personal security. They need some sense of protection against not only the arbitrary invasion of the person by an all powerful state, but also for protection against the arbitrary invasion of the person by unofficial groups — whether they are called Red Guards or Worker's Militia, or whether they are weapon-wielding hoodlums. All of these groups have wreaked great harm in China. In contrast to the above "criminal" legislation, the Chinese have promulgated the first of their so-called economic legislation, a rather lengthy set of regulations on preserving forestry resources which the Chinese realize they have been wasting in recent years.

The Political-Legal Committee promises much. They plan on enacting a criminal code and a code of criminal procedure. They are having a hard time with this, although they thought it would be the easiest to do because criminal codes and procedural codes have existed in the past.⁹ Recently, a Peking University Law School professor of criminal law scratched his head and said to me, "You know, some of our criminal law terms are terribly vague." I told him that a lot of people in China had been aware of that fact for a long time. I too had discovered the vagueness of the laws in the mid-60s when I wrote a book on the criminal process in China.¹⁰ The Chinese are having a hard time finding concrete definitions for these terms. It is a serious business that is going on now.

They are also hoping to promulgate many civil-type laws, a civil code, economic laws — laws that would relate not only to domestic industry, but also laws that will help them induce foreign investment and facilitate foreign

8. The *Security Administration Punishment Act* (SAPA) of 1954 was enacted pursuant to Article 49 of the Chinese Constitution. SAPA provides a extra-judicial means of handling petty offenses and allows local police to impose fines and detain persons found guilty of such offenses. For an example of the broad ranging criminal statutes in China, see *Act of the P.R.C. for the Punishment of Counterrevolutionaries* (1951).

9. *Id.*

10. See Cohen, *supra* note 2.

economic contact in the form of contracts and other commercial devices. They are talking about investment law. They are talking about commercial and company laws that will permit the organization of joint ventures and other similar types of standard international forms for doing business. Environmental law is also on their agenda as well as private international law. They have a very full plate. One expert told me that he figures they are working on sixty-seven different types of legislation. Yet they are a small group with pitifully small resources. Many of their books and libraries were ruined during the Cultural Revolution. Since legal education has been in a shambles for twenty years, they have very few young people upon whom they can draw. While the academics in China can afford the luxury of taking their time, the bureaucrats need to know today, if not yesterday, about all this. The problem is how they are going to acquire the necessary legal learning and from where the rules will come.

Originally, the Chinese hoped to have most of this promulgated by June 30, 1979. Then they made noises that October 1, the thirtieth anniversary of the establishment of the People's Republic, would be the great day when this body of law would be enacted. Now they are very vague and they say, "Look how long it takes to promulgate laws in your country and other countries; it's hard to predict — maybe this year, maybe next year." In a way, they are the victims of their worldwide search for learning. They are no longer looking toward the Soviet Union, at least overtly, as the exclusive source of knowledge. They are looking everywhere — to the United States, to Japan, to other developed countries, and they are also looking to certain, favored East European countries such as Rumania and Yugoslavia. They are trying to understand how the developing countries shape their legal system and how those legal systems mesh with others of the world, particularly those of the developed countries whose technology China is seeking to import.

I remember walking into the office of Jardine Matheson a few weeks ago and their Peking representative shook his finger at me and said, "You people are the most important people in China. You lawyers, you're the obstacle to all this economic development. Until the Chinese have laws, they can't do anything. All the businesses that China is seeking out, not those that seek out China, tell them the same thing: 'Come back when you've got a legal system. How are we going to have a joint venture when you haven't got any laws that we can look to?'"

Now that is a little naive in two respects. One, it is naive in the sense that one believes that once the Chinese have these laws there will be security and all will go well. It is far from a simple matter. Secondly, it is naive in the belief that arrangements cannot be worked out even in the absence of laws. As the Chinese keep telling those companies brave enough to move ahead at this time in negotiations with China: "We can give the force of law to

whatever we write into the contracts and other documents. We can, in effect, write a small company law in your contract." But this is the attitude of most foreign companies and, of course, it is understandable. Foreign contacts, in other words, are stimulating the need for law and economic institutions in China as, indeed, they did in the past. Our recently initialled, but not yet signed trade agreement with the Chinese — requiring that there be provision for protection of patents, copyrights and trademarks as well as a provision for settling disputes and trade facilitation mechanisms — is going to be a further stimulus to get China on the road. In this area, they are moving quickly not only to meet our needs and their needs, but the needs of the other countries with which they want to do business.

Our challenge is now to bridge the gap between two very different systems — our own, perhaps the world's most legalistic, and the Chinese. This problem is going to arise in many forms. Max Weber predicted that if you are going to have a highly developed economy, you have to have a highly developed legal system. For years, China presented a kind of unique challenge to this theory by going in the other direction. But it looks like at least the current leadership of China believes — whether they have heard of Weber or not — that the principles he espoused are correct. One must have a *rex stat* — a law state — not in the sense of a state that will necessarily bring the rule of law in our sense to China, but a state that will provide predictability, a security of expectations so that buyers and sellers know that each will perform.

There are going to be struggles in this international interaction relating to law. Banking is the current one. It may be the most current dramatic joint venture negotiation.

Compensation trade, a whole range of economic devices now underway, are also going to be the battlegrounds. But in banking, for example, the Chinese are asking the financial institutions of the world to lend them hundreds of millions of dollars in return for a short letter saying, "Well, yes, we owe you money and we'll repay it on a certain date." They do not see the need for all the boilerplate typical of contracts in the West. They feel that it is just too complicated and that they do not need that kind of relationship if there is trust between the parties. But a French banker said to them, (and told me later), "I told our Chinese friends, 'friendship is friendship, trust is trust, but if we are lending you \$6 billion we want certain legal protections.'" That may be a naive attitude, but it is one that is entirely understandable; and it will be interesting to see who is going to triumph here — the bankers and their Wall Street lawyers, or the Chinese with their desire for simplicity. Furthermore, it will be interesting to see if the Chinese, as they continue to make great progress, will indeed render a contribution to our search for simplification of our legal system and if they will do away with some of that boilerplate.

There is in China now a tremendous ferment over law — a debate over fundamental questions that the Chinese have never been able to resolve to their long-run satisfaction. Let us examine a few of the parameters. They have to convince the unconvinced leaders among the Chinese communist elite that law reform is important and beneficial to China. Is equal justice compatible with class struggle? Is there a contradiction between the two? The Soviets got rid of their doctrine of class struggle well over a decade ago, but the Chinese persist in believing that class struggle must go on.¹¹ And they are struggling to reconcile the two. The Chinese are asking fundamental questions which we have asked ourselves: what speech, if any, should be punishable? Does defamation exist? Can a person incite others to violence? What if one yells fire in a crowded theater? One now sees debates in the Chinese press (which has been publishing a great many articles) trying to determine what the appropriate limits are. Is law really an instrument of control that is opposed to democracy, or is law really a protector of democratic rights? This debate is very active, and going on strong today. For a while the regime was using the term human rights precisely in the sense we do. Now they are trying to respond to the counterattacks of some of the anti-legalists in the Chinese leadership. They say that human rights are bad; that human rights are what the bourgeoisie developed over the last couple of centuries; that human rights are phony. The legalists assert that the basic rights of the Chinese people must be protected. But what are those rights? And who are the people? And are people who have unfavorable class status outside "the people," used as a term of art? This, again, is presently a very fundamental debate.

The Chinese are trying to define the lawyer. Does the lawyer really have an independent role or is he just another bureaucrat? Is he going to be part of a functional specialization set off against the police, with the administrators checking on the police and the courts checking on the police. The lawyer is supposed to play some role in the paradigm but the Chinese are trying to work out what the role is. Is this all just a question of one fist trying to suppress the enemy, or is it a system of providing checks and balances in order to protect the basic rights of the people as well as to assure an accurate result and suppress evil?

So what we are really witnessing is a very exciting phenomenon in China, a phenomenon that has profoundly affected broad masses of people. Last month an American, who has served in a very high position in the Chinese government and who has suffered under the communist regime, including spending almost ten years in solitary confinement, visited our

11. Recent events in the P.R.C. indicate that even the conceptual basis for class struggle may be under attack from supporters of Deng Xioping.

research center at Harvard Law School. He has been restored to his position in the Chinese government. He said there is barely a person in China who does not have a friend or relative who has not adversely been affected by the events of the past decade. Everyone knows somebody who has been falsely detained, sent to prison, sent to labor camp, sacked from his employment, deprived of his wages or deprived of educational opportunities.¹² He estimates 100 million people, in some way or other, have some kind of grievance against the regime which they can relate to the lack of legal protections. This may be an exaggeration. As an aside, this man is not a representative of a group that opposes the current regime; he endorses it, but he does so in a mildly sophisticated fashion to show that the current regime is motivated only to meet the needs of the masses. Teng Hsiao-Ping and others certainly are not the legitimate children of John Stuart Mill. They are being forced to this legalization effort by a profound desire on the part of the Chinese people — particularly the intellectuals, the officials and the skilled workers whose cooperation they need if China is to get moving again — for some degree of legal security. They are also being pushed by the inexorable demands of population, a population that continues to leap ahead of productivity. China's productivity per capita is declining, one reason for their reluctance to tell us they have a billion people. On the one hand they have to facilitate economic development and on the other, they have to guarantee some degree of legal protection for the people in order to achieve the first objective.

But have we seen all this before? Between 1956–57, there was a very exciting period of law reform when codes were being promised and all kinds of almost "civil liberty-type" discussions could be read in the press.¹³ Then, with the anti-rightist movement that began in the summer of 1957, China sharply veered away from the law reform effort that was, by the way, taking place at the same time in the Soviet Union. The reason is unclear. The answer depends upon the viability of the current leadership, and it is very hard to say whether the current leadership is universally popular or whether the policies that it is pursuing have been welcomed by everybody in China. They have been welcomed by the vast majority of people as far as we can tell, but there is a very important minority that believes they are sacrificing crucial values — values that the Chinese revolution seemed to be on route to implementing, such as egalitarianism and social welfare. There is an aversion to the "revisionist" path that the Soviet Union has followed. There

12. See generally Buo Ruo Wang, *Prisoner of Mao* (1976).

13. See R. MacFARGUHAR, *THE HUNDRED FLOWERS CAMPAIGN AND THE CHINESE INTELLECTUALS* (1960). Shortly after the "Blooming and Contending" Movement peaked, the P.R.C. launched an Anti-Rightist Campaign in the summer of 1957 to counter the excesses of the people.

are attempts to overcome the gap between city and country, attempts to bridge the very broad gap between the best paid and the least paid in China, and attempts to narrow all these inequalities. The current leadership has, in a sense, repudiated this. It was rather striking when, beginning December 20 of 1978, the Central Committee issued a communiqué, the slogan of which became "Overcome Egalitarianism, Overcome Egalitarianism!" They found that to get the economy moving, they had to concede that people work harder when they can see a direct payoff rather than just get treated like everyone else, regardless of their degree of efficacy.

The Chinese are beginning to reach out. Among others, they are reaching out to us, the law professors. They want help. This spring I participated in a twenty-seven hour seminar on joint ventures, trying to tell the Chinese about the experiences that American companies and others have had in the development of Western Europe, Japan and other countries. This summer there is going to be a tax seminar for four weeks in China with eight professors of law under the auspices of the Harvard International Tax Program. It will feature Professors Oldman, Surrey and others, with people from New York University, Columbia and the University of Connecticut as well as a couple of practicing lawyers. For four weeks, 120 leading Chinese tax officials, professors and policymakers will be exposed to "Everything You've Always Wanted to Know About Other Countries' Tax Systems." They are very eager for written information. They ask everybody who troops through China for a copy of the Internal Revenue Code. And if that were not bad enough, they also want all the eight volumes of the C.C.H. treasury regulations interpreting it. At their request and with great reluctance, I put those volumes on the desk of the Commissioner of Internal Revenue and said, "One thing I guarantee you, if you translate all these volumes, you will never achieve your Four Modernizations."

The Chinese have a naive belief that somehow, if they get all the information together, then everything will be easier. Actually it is getting harder and more complicated, and they are getting confused. There is not only a burden of translation in a country that has two fee-trained linguists, but their priorities are uncertain. In the short-run, I am not sure whether this vast comparative law exercise is really going to be productive for them. But it is a tribute to their determination to try to develop laws that will meet the needs of others as well as the needs of China.

Sometimes I get the feeling that the Chinese have a kind of sense of inferiority about their legal system that is excessive, even given the abuses that they have suffered. Sometimes I get the feeling they are engaging in the worst kind of comparative law exercise — comparing our theories with their practice. One always knows one's country's practices, and there is an assumption in China that seems to harken back to the early twentieth

century when there was a naive faith in constitutionalism: in the importation of western forms, China would somehow become a strong and powerful country like Japan has become. We have to watch this problem very carefully. They must understand, of course, that one cannot simply transplant institutions, even though one has to mesh with foreign legal systems.

China has not been entirely without law. Certainly in an anthropological sense China has had norms, institutions and practices. The question is: are they going to throw out the baby with the bath? They need to consider how they are going to adapt. There are many examples of norms that existed in China. A person who walked into a park was confronted with a set of rules, the first of which was "Watch out for spies and counter-revolutionaries" followed by "Don't step on the grass." If a person went into a tea house, the first thing he saw was "Watch out for spies and counter-revolutionaries." The second might have been, as it was in my case, "Treat people from other provinces the way you treat people from your own." (Localism continues to be a problem in China.) If a person wanted to go to a school there might be twelve rules and then a list of sanctions spelled out so that it looked as though they had read the book I wrote on the criminal process of China¹⁴ — everything from criticism to the death penalty if it was bad enough. So China has had norms. Until 1963, China had a whole range of laws and has had a vast amount of internal regulations. But it has not been enough. These rules and regulations and the institutions that go from the household right up to the Supreme Court in Peking (and they work with considerable efficiency when things are going well in China) do not quite look legitimate nor sufficient at this point. They have been discredited and have been regarded as too simple, too unpredictable. The rules and regulations permit arbitrary action and they do not seem to provide the guidelines for economic development. The problem is the Chinese need some kind of a legal system. In principle, they do not want the feudalistic past of the 2000 year millennial development of a highly sophisticated, bureaucratic type legal system. One should not exaggerate the extent to which China did not develop sophisticated legal institutions because we know all too little about its legal system. What we have been learning suggests that there was a considerable amount of legal development there. Chinese legal scholars are wondering what part of that past is usable? It is interesting that *The Law Review* has just started publishing a good many articles devoted to this question, that is, to what extent one can borrow from the feudalistic past. They know, in principle, that they do not want the Kuomintang legal system that borrowed its forms from Europe, largely by way of Japan. Yet there is a feeling that they may come

14. See Cohen, *supra* note 2.

out with a system looking quite a bit like it, similar to the legal system developed in the Soviet Union during the 1920s, under Lenin's pressure, which began to look something like that which existed before 1917, despite the early Bolshevik dream.

So the Chinese are worried. They do not want to appear revisionist, but they certainly do not want to import too many models from abroad. They cannot use the Soviet model explicitly anymore. Yet how can they relate to the rest of the world unless they use legal institutions and norms that are borrowed from abroad? It is a tremendous challenge.

It is also a challenge, in a way, for us. We cannot revive the missionary spirit, and yet the missionary spirit dies hard. Presently, China is not allowing us to foist our own values upon China, but is reaching out to us and asking for help. It may not be help that is unusual, but the kinds of contacts and cooperation that people in the legal profession and in legal education have had with many other countries for years. They want to attend our institutions, and in order to do so, they are trying to improve the English of the potential candidates. They want to have a vast array of Americans, because they do not trust us and they feel that if there are enough of us and they can compare what one says to what someone else says they can get even more advice in terms of advising China. If they can have enough contacts with us within China as well as out, this can help them assimilate the vast amount of learning what they have to cope with.

I think we have some obligations here. We should not have any illusions, yet we also have to remember that things change. In an article in the *China Quarterly*¹⁵ on the new Chinese constitution that was effective in March 1978, I tried to point out there may be certain possibilities, even in the unfertile Chinese soil, for the development of certain ideas of constitutionalism upon which broad groups in China that have been allowed to express themselves, at least from November 1978 until March 1979. It may be possible to show that there is a wider support for ideas of human rights than we may have anticipated. We should not assume that if a Chinese is taken into a room and tortured, and we are taken into the same room and tortured, that it hurts him less than it hurts us because his ancestors lived under Confucianism; he would not like it. He also does not like the inability to read and he does not like the loss of children, job or status. There are many fundamental values that we share with the Chinese and the problem is to sort out those which we may or may not share with them, whether or not they live under communism.

We have to understand the consequences of the failures by any government that runs China — failure to organize and the failure to provide

15. Cohen, *China's Changing Constitution*, 76 *CHINA QUARTERLY* 794-841 (Dec. 1978).

clothing, housing and other minimum guarantees of life. The capacity for mischief as well as human suffering is enormous. People in China are asking what kind of system will prevent that from happening. One reason why they have curbed the expression of wall posters in recent months is that people cannot keep their questions within narrow confines. People are asking very basic questions in China. They look around the world, yet it should be noted that the image of America was profoundly oversold to them. Having gone to the extreme of damning us unfairly as we damned them unfairly for two decades, the Chinese went through their own period of converse or obverse "Marco Polotis" in January and February of 1979 following Teng Hsiao-Ping's visit. Their television was giving them interviews with average American workers who turned out to be IBM executives getting paid \$34,000 a year, living in a nice house, having two cars, and so on. Everybody in China wanted to go to America in February and March. It is nauseating to visit a country where people — officials of the government — say that nothing in their country works, everything is lousy and everything American is wonderful. What does one tell them? One knows it is not true and even if it were true, it would be very unfortunate.

Now they are trying to correct the image by printing interviews with people like the chef at the Peking Hotel who says, "I've cooked for foreigners for forty years and believe me they're all slobs." Similar to their views of human rights and economic development, the Chinese are striving for a middle view of the United States. It is hard to get their bearings, and unfortunately they are subject to mood swings, just as we are.

It is possible to stop foreigners from dancing with Chinese women and sleeping with them. It is possible to stop Chinese from wearing bell-bottom trousers and having long hair. But it is not going to be possible, I think, to import foreign technology divorced from the context, the intellectual ideas, that necessarily go with them. That is the challenge they confront, and the law is one of those areas of technology that the Chinese are hoping to import. But can they do so without the legal values and assumptions that underpin them? I do not think so.

Finally, the Chinese are aware of modernization in Taiwan as elsewhere, and they know there has been economic progress in Taiwan. They also know that there is a continuing dictatorship in Taiwan, although it is one that is not by any means as severe as what they have experienced on the mainland. The Taiwan example may give us some clue about what to expect in China if, and it is a big if, all goes well. In essence, what we have seen in Taiwan is greater economic development, greater education and greater international contact. A new generation coming gradually into power has introduced new ideas and pressures on the regime for changes, even while many measures of progress are changing.

So, one has to retain, I think, a healthy skepticism. One has to know their development will be in fits and starts. We hope it is going to be two steps forward and one step backward rather than the contrary. On the basis of experience, we are obviously facing a highly volatile situation in China given the population to resources ratio, the small opportunities open for education for people, and the rising expectations that come from foreign contacts and other sources. We know that there is going to be a real challenge there. In essence, one has to be skeptical about legal development.

Yet the current situation is tremendously exciting. We are talking about one quarter of the world's population that is now engaged in a very exciting effort to see what kind of a legal system China can use. It is a reminder, I think, of man's search for the rule of law — not only as an instrument of control, but also for the protection of at least certain individual rights, and for the facilitation of economic development. It may not end up being our type of rule of law, but inevitably it has got to be better than what has been witnessed on the mainland in recent decades.

COMMENTS

*Ross H. Munro**

(*Editor's Note:* Due to technical difficulties during the Conference, the text of Mr. Munro's speech is not available but the following is a brief summary of his presentation. The following articles may also be useful in ascertaining Mr. Munro's views on human rights in China:

1. "Peking's Controls Are Subtle But Real," *The Washington Post*, October 9, 1979, pp. A1, A15.
2. "Peking Sharply Restricts Peasant Travel to Cities," *The Washington Post*, October 10, 1977, pp. A1, A9.
3. "Dissent Can Bring Death, Writing Wall Posters Isn't For Everyone," *The Washington Post*, October 11, 1977, pp. A1, A12.
4. "Social Groups in China: Watchdogs for Deviant Behavior," *The Washington Post*, October 12, 1979, pp. A1, A12.

* Time-Life News Services correspondent in Hong Kong; former resident correspondent in the P.R.C. for the *Toronto Globe & Mail*.

5. "China's Rigid Rationing, From Rice To TV Sets, Buying Takes Coupons," *The Washington Post*, November 27, 1977, pp. C1, C5.)

Mr. Munro indicated that the human rights situation in China was, until recently, an ignored subject. He recalled that when he received his assignment to Peking from the *Toronto Globe & Mail*, he requested thirty China specialists to provide a reading list for him. Among the reading lists he received, only two included Bao Rue-Wang's *Prisoner of Mao*, considered to be the only thorough study of labor camps in China. When Mr. Munro was in China, he was told that some Chinese intellectuals wanted to borrow books from Westerners in China.

Recently, Vice Premier Li Hsien-nien acknowledged in a domestic document on agriculture that more than 100 million Chinese peasants live in a semi-starvation situation. There is information available on human rights in China but the Western world seems more interested in human rights in the Soviet Union.

Mr. Munro emphasized that Americans should demonstrate their concern for the human rights of the Chinese even though little can be done by Americans to effectively improve the situation. Nonetheless, the Chinese authorities would be more cautious when handling their dissidents if Americans express their concern over the fate of these people.

COMMENTS

*Daniel Kelly**

I do not speak as a scholar, who has learned through research and study, but as a man who has learned directly from thirty-eight years of living in China, twenty of which were spent in Chinese prisons, labor camps and labor farms.

My father was a Presbyterian missionary doctor who went to China shortly after the turn of the century, but before the establishment of the Republic in 1911. Through his work, he developed a profound understanding and affection for the Chinese, so much so that he remained in China for over

* Mr. Kelly is an American who, after serving twenty years in labor camps in the P.R.C., was released after normalization was announced.

fifty years, electing to stay even after the 1949 Revolution. He thought the Communists would not be able to retain power for long and did not want to interrupt his career. Although events proved him wrong, he was able to do a limited amount of religious work and was able to stay in China until his death in 1957. My brother, sister and I were sent back to the United States at the age of nine to continue our education. My brother left China in 1946 and my sister left in 1948. I was to leave in 1950 — one year too late. Of course, I still could have gone in the huge exodus of foreigners who left during that period; but my father, thinking that the Communists would be only a temporary phenomenon, thought it best to wait until the situation in China became more stable. The Communists did not fade away, but became stronger. As the years passed, the Communists tightened their control of the country and developed a hatred of the United States for its role in the Korean War, its support of Taiwan and its embargo of the mainland. The chance of leaving slowly diminished and, as Americans, we became a target of Chinese politics.

By this time my father was old and feeble, and it was easy to see that he would not be with us much longer. But I, being just a young boy, was considered an ideal candidate for "re-education" about the United States, reports of whose "imperialistic crimes" echoed throughout the country. They reasoned that I was a boy who could be "saved", who would realize the atrocities that the United States committed against the "peace-loving working class, national patriots," both at home and abroad. They believed that once I realized the "truth," I would embrace the Communist cause and wash my hands of America and renounce my American citizenship.

The Communists never bothered to ask whether I would cooperate; they just took it for granted. But what they were proposing was so contrary to my upbringing, my pride in being an American, my sense of honor, loyalty and self-esteem, indeed, my whole concept of right and wrong, that all their attempts to convert me failed. My outright refusal must have been quite a shock to them. My mother and I applied for permission to go back to the United States after my father's death. While my mother was allowed to leave, I was ordered to remain in China since I needed more "education." After all, I was only sixteen.

It was then that I saw that legal exit from China would be impossible, and since I did not wish to give up my ideals, I resolved to try to escape the country by swimming across the bay to Macao. I travelled from Peking to Canton by train, and then from Canton to Shi-qi by boat. I walked the last lap through the border security zone which is actually miles inside the border. It took me a day and a night to walk through the zone, avoiding roads and people (designated "special residents"), often wading through paddies. At dawn, I could see and hear the bustle of Macao, just across the water, but a

border guard spotted me and before I knew what was happening, I was wrestled to the ground by a guard dog.

Thus, in 1958, at the age of seventeen, I began my life of prisons, labor camps and prison farms which lasted twenty long years until normalization between the United States and China. It was only then that the Chinese authorities allowed me to leave the country; I brought my family with me on what was termed a "visit" to the United States for a period of one year. Technically, I was still a prisoner on a one year parole. Everybody knew what my leaving China meant, but the Chinese insisted on this terminology to save face. I was only too glad to acquiesce. I was met at the Hong Kong border by American consular officials, issued a new American passport (my previous one dated back to 1948) and with immigration papers for the rest of my family, was permitted to come to the United States.

I was incarcerated for twenty years without ever being brought to trial, ignorant of the charges against me. The whole process was in the hands of the police. After nearly a year of interrogation, a piece of paper was brought to me. The policeman grabbed my hand, pressed my finger into an ink pad and then pressed it against the piece of paper. I never got to see what was written on that piece of paper, but it kept me in jail for twenty years.

Twenty years is a long time, especially when one goes in a boy of seventeen and comes out a man nearly forty. They are the best years of a man's life which, once lost, can never be regained. The experience, however, gave me an education that no amount of research or study could have achieved. What I gained was a deeper understanding of China and the Chinese than I could have attained in any other way. The mental outlook, assessments of the past and present, and aspirations for the future of the Chinese were revealed to me.

Because China is a closed society where the individual's freedom to live and travel as he wishes is severely limited, it is almost impossible for anyone to know of events beyond the narrow world of his work and family. I was able to know however, almost immediately, what was going on in all parts of China. My very confinement in prison allowed me to gain this information. I came into contact with people from all walks of life, from all over China. Some were petty criminals, but others were people who dissented from the official party line or unfortunate individuals who were swept up in one of the frequent purges. One day I might be talking to a thief, the next day a former high party official, doctor or professor. From all these people, I gained current information on what was happening around the country as well as insight into how the Chinese saw themselves and their world. My refusal to renounce my U.S. citizenship gained for me the respect of my fellow inmates and made them easy to talk to openly.

Although China is a great country, rich in culture and tradition, the lives of the common people have not been one to envy through the thousands of years of their history. This history, for them, has been one of long hardships and sufferings. When they were able to overthrow the emperor dynasty and establish the first republic in 1911, subsequent events did not go as smoothly as the Chinese and some foreign observers had hoped. We Americans, who were very concerned with the situation in China, tried to help or advise the Chinese along the road towards democracy. But our eagerness to introduce the Chinese to the bewildering ways of democracy and our limited understanding of their culture were, in some ways, responsible for some of the chaos in that new, but unstable, Republic. This was also the era of the war lords who refused to relinquish their power and privileges to the central government. There were the factions inside the Kuomintang involved in a power struggle for the leadership of the party. There were a lot of government officials who served only their own selfish interests. Finally, there was all out corruption down the entire line. All this, together with the war against Japan, contributed to the further decay of the system and the emergence of the Communist insurgents, who were offering a new and promising way of life to the people, as the victors in the civil war between them and the K.M.T.

But after 1949 things did not materialize as had been promised. The flames of patriotism, duty and service, burning to build up a strong and prosperous China, gradually lost its tempting glow as political campaigns followed one after the other. Each rivalled the other in creating an atmosphere wherein millions of "class enemies" were executed and other millions imprisoned, exiled or denounced.

Of course, there were some good things done to promote the national image at home and abroad. There were the huge edifices which served as models of success. Buildings, factories, communes, bridges and railroads served as showpieces of China's socialism. But when one considers the enormous price in human bloodshed and suffering and the surrender of many of the basic rights and liberties of the common people, one cannot help to stop and question: Was it too exorbitant a price to pay?

Then one looks at the island of Taiwan, where another 18 million Chinese people live under a different system of government. Although these were the very same officials who had been forced to flee the mainland, they had learned from their failures, corrected their shortcomings and re-embarked on the course advocated by Dr. Sun Yat-sen so many years before. All in all, one must admit that they have done a truly remarkable job. There are still shortcomings. Democratic procedures and civil liberties have been curbed, but this is more in response to the threat (although may be exaggerated) from the mainland than the willful intent of the leadership.

Normalization of relations between the United States and the People's Republic of China is a landmark in the history of the modern world. It is not the "love affair" that some people believe it is, it is not yet even a friendship. It is simply an acknowledgement of reality. When one considers the vastness of China, her enormous population and the role she has played in shaping both Asian and world affairs, the United States' refusal to admit the existence of the PRC for so long was simply foolish. The countries of the free world may not like Communism, but it is thriving in China today.

Hatred and misunderstanding of the United States led to the Chinese involvement in the Korean and Vietnam Wars. The Chinese people and most of their leaders were led to believe that the ultimate goal of U.S. involvement in these two areas was an attack on China itself. If, at that time, we could have had some sort of normal contacts with each other, the scale of losses in both of those conflicts could have been reduced. Relationships between sovereign states should not only exist in the "balance of power" sense but they should also function to allow countries to live together in the world community, to communicate with one another, to exchange ideas and to resolve differences for the good of mankind.

Besides weighing the legal, political and commercial aspects of the U.S.-China relationship, one must consider the human implications. Normalization is the best move for the sake of the 900 million Chinese people. Consider the wall-posters in Peking and the throngs gathered around foreign (especially American) newsmen after normalization. What they have voiced, the questions they have raised, is proof of the Chinese people's eventual awakening. It is we Americans who have brought on this awakening through normalization, and as more contacts and exchanges occur, the awareness of the Chinese people about the world around them and their own situation will change rapidly. The time will come when they will be able to compare, form their own goals and strive to achieve them. Because of our stand on the human rights issue, the Chinese have begun to use this term for the first time in their history, hoping for outside understanding and support.

The Chinese in Taiwan have been our long-standing friends and allies. In our normalization with the PRC, we should have made a stronger stand in giving Taiwan a better deal and more security. We should help this free portion of China to exist, to expand and to flourish as an example for the people on the mainland to witness.

The people of China are a great people. It is my hope that through normalization the governments involved will attain a more peaceful and stable world through official and business dealings with one another. Ultimately, the people will reap the fruits of mutual understanding and a better life for all.

CHAPTER VIII.

THE COMMERCIAL IMPLICATION OF NORMALIZATION

*William Clarke**

The President's announcement on December 15, 1978 of normalization of relations with the People's Republic of China (P.R.C.) set off a flurry of activity in our office, reflected by over 300 phone calls and letters a day, the necessary doubling of our staff (the bureaucratic aspect of my background) and requests for over 20,000 copies of our report, *Doing Business with China*.¹ These things are reflective of the sweeping interest in the country and of the potentially enormous new market for American firms. But the President's action and Chinese action on January 1, 1979 only normalized our political relations; it did not normalize our economic or commercial relations. There is still a long way to go.

The joint communiqué that emanated from the Deng visit with the President at the end of January, 1979 clearly set the stage for the normalization of our economic and commercial relations, and gave some impetus to moving quickly ahead with the resolution of the outstanding issues.² The communiqué called for a trade agreement between the two countries, a maritime agreement and an air agreement. During the visit, a cultural agreement was signed,³ as was a consular agreement whereby we would have consulates in Shanghai and Canton, while the Chinese would have consulates in Houston and San Francisco.⁴ Negotiations on that latter point are still underway.

At the end of February, Secretary of the Treasury, Michael Blumenthal went to China to convert our liaison office into an official embassy on March 1. During the visit, Secretary Blumenthal initialled a claims and assets

* Director, People's Republic of China Affairs in the Bureau of East-West Trade, Department of Commerce.

1. See p. 148 *infra*.

2. *Joint Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China — January 1, 1979*, 18 INT'L LEGAL MATS. 274 (1979). See Appendix-Selected Documents p. 105 *infra*.

3. *Cultural Agreement Between the Government of the United States of America and the Government of the People's Republic of China — January 31, 1979*, 18 INT'L LEGAL MATS. 341 (1979).

4. *Agreement Between the Government of the United States of America and the Government of the People's Republic of China on the Mutual Establishment of Consular Relations and the Opening of Consulates General — 1979*, 18 INT'L LEGAL MATS. 337 (1979).

settlement⁵ and reached an agreement on establishing a joint economic committee between the two governments for purposes of discussing trade problems as they arise in the future.

The past Secretary of Commerce, Juanita Kreps went to the P.R.C. in early May and continued the momentum that had been developed by the Deng visit here and by the Blumenthal visit to China. She was able to sign four 'scientific and technical accords⁶ and to get an agreement from the Chinese to begin discussions on a civil air agreement. Drafts were exchanged on a maritime agreement which would contain cargo-sharing provisions. An agreement was negotiated with the Chinese on the exchange of trade exhibitions, and the first Chinese trade exhibitions in this country will be in New York, Chicago and San Francisco in 1980. Secretary Kreps signed the claims and assets agreement⁷ which was a significant step in moving our commercial relationship forward. Most important, she was able to initial a trade agreement.⁸

There are quite a few complications in negotiating a trade agreement with the Chinese. The primary differences were not in principle; the problem was the difficulty the Chinese had in trying to understand the legal language we were forced to employ in the draft trade agreement by the Trade Act of 1974.⁹

The trade agreement is a significant step forward in improving our relations. It is the keystone around which the full normalization of our commercial relationship must be built; providing for nondiscriminatory, "most-favored nation" treatment of China, including tariffs on Chinese exports to the United States. The agreement also outlines measures to promote economic and commercial relations and to facilitate the conduct of business, easing the difficulties in establishing business offices in China. It also contains assurances relating to financial transactions regarding international payments and banking transactions. In addition, the two sides agreed to facilitate the availability of official export credits. Furthermore, the agreement endorses procedures for the prompt resolution of commercial disputes and deals with methods for resolving trade problems that might arise. Finally, there are provisions regarding the protection of patents, trademarks and copyrights.

5. *Agreement Between the Government of the United States of America and the Government of the People's Republic of China Concerning the Settlement of Claims — May 11, 1979*, 18 INT'L LEGAL MATS. 551 (1979). See Appendix-Selected Documents p. 131 *infra*.

6. N.Y. Times, May 14, 1979, at 1, col. 5; N.Y. Times, May 16, 1979, at 2, col. 1.

7. See *Settlement of Claims supra* note 5.

8. N.Y. Times, May 14, 1979, at 1, col. 5; 18 INT'L LEGAL MATS. 1641 (1979).

9. [1974] 25 U.S.T. 720, T.I.A.S. No. 7821.

The agreement is now subject to review and approval by the two governments. Until that review is completed, I cannot make a firm prediction as to when the agreement will be signed and subsequently submitted to the Congress. We will, however, probably insist on a satisfactory conclusion of the textile negotiations before submitting the trade agreement to the Congress.

Let me give you a picture of trade with China in 1979. The first quarter figure of \$500 million indicates that trade could reach a total of \$2 billion this year. At a minimum, the figure would be \$1.8 billion, a substantial increase over the 1978 total of \$1.15 billion. More importantly, the favorable balance of trade would double from \$500 million last year. These increases should, however, be kept in context — our trade with Taiwan was approximately \$7.5 billion in 1978.

The sharp rise in the dollar amount of U.S.-China trade this year is primarily attributable to the return of China to the U.S. agricultural market. Secretary of Agriculture, Robert Bergland was told that the figure of Chinese grain purchases from the United States would run five to six million metric tons each year. In addition to wheat and corn, contracts call for sales of cotton, soybeans, oil, tallow, hides and skins, and breeding stock.

Presently, the ratio of agricultural to non-agricultural U.S. exports to China is about seven to three. Manufactured goods still have a long way to go. In the last twelve months, however, some interesting contracts and agreements have been signed, some of which are worth noting as they are reflective of the current market and Chinese priorities, and are indicative of where U.S. firms are competitive.

The Chinese have signed protocols or letters of intent with U.S. firms for a number of large transactions. United States Steel has signed a \$1 billion agreement with the Chinese and Bethlehem Steel has concluded a deal for more than \$600 million. Kaiser has also signed a protocol. Fluor Corporation has concluded an \$800 million arrangement for a copper project. Both Hyatt and Intercontinental Hotels have negotiated agreements in excess of \$500 million each. Kellogg has sold a plant to the Chinese. The Chinese have also ordered three Boeing 747 SP jets with an option to purchase two more, a deal worth more than \$200 million. Commodities sales to China for the first quarter of 1979 include nearly \$20 million worth of polyesters, almost \$10 million of fertilizer, almost \$4 million of pulp paper and more than \$10 million worth of agricultural chemicals.

There have also been some significant sales of manufactured goods including nine Bell 212 helicopters for more than \$12 million; 700 Ford trucks for about \$7 million; \$7 million worth of Joy underground mining equipment; and other purchases of machinery of heavy equipment from General Electric, Caterpillar, Rexnord and others. Pfizer has sold a million

dollar body scanner, and Control Data Corporation has sold \$69 million worth of seismic data processing computers. Over \$200 million of petroleum equipment has been sold to China since 1973, much of it by Continental Emsco and Armco International's National Supply Company. There has also been a significant amount of petrochemical and other technology involved in U.S.-China trade over the past six years. One of the most exciting and potentially most rewarding efforts now underway is the exploration by American and foreign companies for oil in the South and East China seas. The Chinese are pinning great hopes on successful developments there.

The bulk of imports from the P.R.C. have been in traditional commodities such as textiles, tea, fireworks, tin, tungsten and antimony, as well as nails, antiques, shrimp, feathers and down. Coastal States Gas has begun to import Chinese crude oil; the first \$10 million shipment arrived in March. The deal's 5 million barrels represents, however, only one half day's supply of American oil imports.

Of course, Sino-American trade is still faced with the textile import problem and the continuing irritant of U.S. government controls on some American exports. Also, with the exceptions of the Coca-Cola and Schenleys' deals, there are no consumer goods in our exports to China. Basically, the Chinese will not spend their foreign exchange on the importation of consumer goods. Notable aspects of on-going negotiations with the Chinese anticipate American participation in coal mining developments, non-ferrous mines, steel plants, locomotives, diesel engines, trucks, and mining and construction equipment. The Chinese are also negotiating the purchase of a \$500 million domestic satellite with earth stations.

In general terms, however, the United States still trails Western Europe and Japan in obtaining a normal share of the China trade. The P.R.C. buys primarily on the basis of price, quality, and terms, and we have to compete on that basis. With the January 1st recognition of China, the United States is no longer discriminated against for political reasons, but there are significant factors which continue to operate against us. These include the lack of adequate financing of deals with China, and our lack of knowledge and experience in dealing with the Chinese, as well as our lack of sufficient competitiveness which, when coupled with our occasional impatience, is a significant hindrance to trade. It also must be remembered that U.S.-Chinese economic and commercial relations have yet to be normalized. The trade agreement has only been initialled, not yet signed, and the Export-Import Bank has yet to open its window to China.

As I have indicated, our feelings about trade in 1979 are upbeat; the final figure could reach \$2 billion. To consider prospects beyond 1979 we must look more closely at the Chinese market and their plans for modernization of their economy. In fact, we should look at China itself more closely. On the one

hand, one sees a nation which has detonated nuclear devices and launched earth satellites. China is a nation which ranks fourth in the world in energy production and is one of the world's largest textile producers, with a low inflation rate. It is a nation which extends economic aid to others, and is succeeding in controlling its birthrate and eradicating, or at least controlling, most major diseases. On the other hand, one's perception of China must also include an awareness that eighty percent of its people are engaged in agricultural pursuits, surely a hallmark of a developing country; seventy percent of its railroads are still powered by steam, and China's per capita consumption of power is on a par with that of Bolivia. There are no privately-owned cars in China and no intercity commerce by truck. Bicycles, rather than automobiles, cause traffic jams on city streets, and cotton cloth is rationed. We are only now seeing the beginnings of a tourism industry in China and the first advertising by foreign companies in the Chinese media. These contrasts in the perceptions and realities of modern day China suggest a unique economy.

Any discussion of the trade picture beyond 1979 must make reference to the current ten year plan outlined by Chairman Hua in 1978 and subsequent events affecting that plan. As outlined by Hua, the parameters of the plan encompassed a projected eight year capital investment picture that would be equal to the total investment of the past twenty-eight years. The plan looked to an annual agricultural growth rate of four to five percent, which is twice the rate of agricultural growth from 1952 to 1976. With 120 key projects earmarked for development, industrial growth was slated to increase at a rate of more than ten percent each year. To accomplish these goals, Peking clearly contemplates a major infusion of foreign plants and technology.

This plan, however, appears to be in serious trouble. It is clearly too ambitious. Some people say that the Chinese, realizing this, are presently "retrenching." In our meeting with him, Vice Premier Deng made it clear that the actions the Chinese are currently taking are merely a "readjustment," a compensation for the loss of balance in the Chinese economy over the past ten years. The purpose, Deng said, is to speed up modernization, looking both toward the short and the long run.

It is important to understand the constraints and problems that have led the Chinese leaders to make this readjustment, because the success they have in controlling them will determine the strength and shape of the market for American firms in the 1979-85 period. With twenty-two percent of the world's population subsisting on only seven percent of the world's arable land, agriculture is, of course, China's number one priority. Each year, feeding this enormous population requires the use of over \$1.5 billion in foreign exchange reserves on the purchase of grain alone. China is also faced with the socio-economic problems of putting management back in control of produc-

tion, maintaining work force discipline and providing material incentives to the work force without arousing an uncontrollable demand for consumer goods.

There is also the problem of just how much technology China is capable of absorbing at the present time. Scientific education and a generation of scientists and engineers was lost during the Cultural Revolution. There is also a great contrast between the level of technical skill of cadres in Peking and those in the countryside. The current program of sending students to the West for scientific and technical training is an attempt to rectify these problems, but this will take time. The power, coal, steel and transportation industries are presently serious bottlenecks to economic modernization. As much as twenty percent of Chinese productive capacity is inoperative owing to power shortages. There is the question of military modernization, which was highlighted by the recent incursion into Vietnam. The omnipresent issue of political stability of the Chinese government is also a factor in the success of the modernization plan. The Deng leadership, however, appears to be as stable as can be expected in the immediate post-Mao period.

Planning and financing the modernization effort have also presented major problems. There is evidence suggesting that the Chinese leadership did not fully comprehend the technological complexity of their Ten Year Plan or their ability to pay for it. We therefore see the cancellation or renegotiation of what were thought to be firm agreements, and the Chinese reducing the number of projects under simultaneous construction. It is probable that the Chinese leadership over-estimated the return from off-shore petroleum developments and under-estimated the costs of importing plants and technology.

So, as Deng says, China is in a period of readjustment that will not be complete until 1981. To date, this readjustment has been manifested by the suspension of thirty contracts, with Japanese firms totalling \$2.7 billion, the slowdown of ongoing negotiations and a great debate on whether to redirect the bulk of investment into agriculture and light industry and away from steel and other heavy industries. Deng told us, however, that readjustment will not result in a cutback of imports. Indeed, some of the Japanese contracts have already been renegotiated. Based on the original plan, we estimated a Chinese import bill of \$65 to \$80 billion. Even when the estimate is scaled down to account for the current slowdown, we still estimate import expenditures of over \$40 billion. Indeed, we can see a good part of this development in agreements and contracts already concluded which have jumped from \$7 to \$30 billion.

It is no wonder that we see the Chinese pulling out all stops to maximize traditional exports, using counter-trade, participating in joint equity projects, encouraging tourism and attempting to speed up the development of oil and

other new exports. Even with these efforts, we foresee a cumulative trade deficit of more than \$15 billion from 1979 to 1985. Li Xiannien, China's top economic manager, has put the figure at \$20 billion, which, by the way, is still less than the U.S. trade deficit for 1978.

We think the gap between earnings and expenditures could be financed. For instance, the British have offered a \$1.2 billion line of credit, the Japanese have put together a twenty bank syndication extending \$2 billion in credit, and the French have offered \$7 billion. Credit has also been extended by the Canadians and the Italians. But while China is considered a good credit risk whose purchases could be financed, the Chinese, expressing their typically self-reliant character, are more concerned over whether they can pay it back.

The important question is how these changes will affect the economic chances for American firms in the Chinese market during the modernization period. The brightest outlook is for agricultural products and petroleum equipment and technology. There are still many opportunities in the iron ore, coal and steel industries. Other opportunities exist in the areas of non-ferrous metals, mining and construction equipment, hydroelectric technology, machine tools and locomotives, agricultural chemicals and equipment, electronics such as computers and advanced medical instruments, and transportation. There may also appear to be good chances for architect-engineers, engineering contractors and those offering management advisory services to enter the China market.

The Chinese interest in what we have to offer is strong. Presently, there are over forty Chinese delegations in the United States. But make no mistake, the Chinese are here to learn as much as they can. They intend to copy where feasible, to license where they cannot, and to buy American hardware only when they have to. It is our job, therefore, to assist them, but at the same time, to maximize the return to us in doing so. We should not offer the Chinese a free ride at our expense.

American firms need to understand the Chinese market and approach negotiations with a willingness to discuss financing, buy-back compensation, and even equity participation. Our current view of Sino-American trade is one of measured optimism, not euphoria. Perhaps our two-way trade total will reach \$4-5 billion annually by 1985. The United States will realize some of these big projects I have talked about, but there is no question that without Export-Import Bank financing, we will be unable to overcome our present competitive disadvantage with Western Europe and Japan.

Of course, after the Chinese have run through the first round of billion dollar loans in the fixed interest range of 6 1/2-7 1/2 percent, there will be less of that money available for further financing. Banks will be taking a much harder look at Chinese performance and interest rates will probably be

considerably higher. Even then, however, we will remain at a disadvantage without Export-Import Bank loans and guarantees in the picture.

Of course, I believe it is the opinion of our banking experts that Japan and Western Europe cannot or will not be willing to provide all the credit China requires without the participation of the U.S. banking community. The picture is not all bleak, but putting the Export-Import Bank into the picture is essential if we are going to be able to approach our overall potential for trade with the P.R.C. As a result of Secretary Kreps' efforts in getting a trade agreement initialled, I am heartened that we will eventually be able to get the Export-Import Bank window open for the Chinese.

In summary, here is where we stand today in our attempt to normalize Sino-American economic and commercial relations. Trade for 1979 could reach \$2 billion. Beyond that, the market for American goods and services depends on the degree of success the Chinese have with their program of readjustment. It is estimated that two-way trade between the United States and the P.R.C. could reach \$4–5 billion annually by 1985. We must bear in mind, however, that the market for American goods and services depends largely on full normalization of our economic and commercial relations so that we can compete fully and equally with Western Europe and Japan.

CHAPTER IX.

SCIENTIFIC AND CULTURAL EXCHANGE WITH THE PEOPLE'S REPUBLIC OF CHINA

*Hosley G. Handyside**

Within the last year, United States-People's Republic of China (P.R.C.) relations in science and technology, particularly energy, have intensified. Prior to December 1978, cooperation and exchanges between the two nations were necessarily limited by the absence of normal political relationships. There were, however, a few notable events, demonstrating that a spirit of cooperation could exist between the two countries. Following the historic Nixon visit in 1972, several informal good will exchanges were arranged, especially in the field of high energy physics. The director of the Chinese Institute of High Energy Physics (H.E.P.) led a delegation to the United States in 1973. With the visit to China of Nobel Prize winner Dr. Samuel Ting, the pace of U.S.-P.R.C. relations began to quicken. Dr. Ting's visit was followed by several delegations of energy experts, and on January 30, 1979, with normalization only one month old, a formal agreement for cooperation in the field of science and technology was signed. On this same day, a second agreement was signed to encourage cooperation with the H.E.P. Subsequent to these agreements, interaction between P.R.C. and U.S. energy scientists increased rapidly.

Several important delegations from the United States were sent to China in the Spring of 1979. Oil company representatives visited China to discuss the research and development of China's off-shore oil resources while a group of coal industry specialists journeyed to China to explore the commercial development of coal resources. China was host in June 1979 to an eleven member delegation from the National Air and Space Agency and a thirteen member delegation from the U.S. Geological Survey. On June 8, 1979, a U.S. H.E.P. delegation left for China to join their Chinese counterparts in forming the H.E.P. Joint Commission, the purpose of which is to implement a detailed program of research and technical assistance in the H.E.P. field.

In June 1979, the United States was host to a Chinese delegation of solar, geothermal and magnetohydrodynamic specialists. As guests of the Scholarly Exchanges of the National Academy of Sciences, this group attended a Solar Energy Conference in Atlanta and met with solar and other renewable energy specialists. A second delegation, lead by Vice Premier

* Deputy Assistant Secretary for International Programs, Department of Energy.

Kang Shien, pursued an intensive schedule of visits to energy organizations and facilities as guests of Energy Secretary Schlesinger. The itinerary included trips to coal mining and exploration facilities, off-shore oil installations, gas pipe distribution nets, hydroelectric generating plants and high voltage transmission lines. The head of the Chinese government petroleum organization is expected to sign a number of off-shore oil agreements with U.S. oil companies. Exchanges of this nature will probably continue during the next few months, and there is the possibility that a number of Chinese energy technicians will be trained in the United States.

American-Chinese energy cooperative efforts will take a variety of forms in the future, implemented under the auspices of different government agencies. In the petroleum and natural gas area, the Chinese government and U.S. firms will enter into commercial contractual arrangements. American-Chinese cooperation in the hydro field will be strictly conducted on a government-to-government basis until the Chinese identify their technical needs. Afterwards, U.S. designers, engineers and construction firms may become involved.

The objectives of these scientific and technological exchanges are many. China plans to develop U.S. energy resources in three different areas. First, the Chinese hope to rapidly develop hydro energy, an inexpensive energy source which has not been extensively harnessed up to date. Second, they plan to expand production and utilization of coal to meet growing energy demands. Finally, another energy resource to be developed is oil and gas which will, in turn, stimulate modernization. Whatever the goals, the end result is clear: the growing cooperation between China and the United States in the energy area is both an income source for U.S. firms and a means to expand the total amount of energy available to the nations of the world.

COMMENTS

*Pierre Shostal**

Science and technology activities with China had been conducted in private channels since the Nixon visit in 1972, with much of this being channeled through the Committee of Scholarly Communications with the

* Director, Office of Cooperative Science Programs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

People's Republic of China. In July, 1978 Frank Press, the President's Science and Technology Adviser, led a delegation of senior U.S. Government officials to China. A preliminary identification was made of possible areas of government-to-government cooperation. In the fall of 1978, delegations led by the Department of Energy Secretary Schlesinger and Agriculture Secretary Bergland discussed specifics. A senior Chinese delegation discussed space cooperation in the United States and negotiations also took place for the establishment of an exchange of students and scholars. None of the arrangements discussed, however, resulted in formal agreements because relations were not yet fully normalized.

This situation changed with the December 1978 announcement that full relations would be established and the January 1979 visit to the United States of Vice Premier Deng Xiaoping. During Deng's visit, an umbrella science and technology agreement was signed. Since that time, protocols have been concluded under this agreement for cooperation in such fields as oceanography, meteorology, industrial technology and health. Activities under these protocols have proceeded at a brisk pace and science and technology cooperation occupies a key place in the overall U.S.-Chinese relationship.

SELECTED DOCUMENTS

DOCUMENT 1**An Amendment to the International Security Assistance Act of 1978 Concerning the Mutual Defense Treaty with the ROC****United States Republic of China Mutual Defense Treaty****Sec. 26. (a) The Congress finds that--**

(1) the continued security and stability of East Asia is a matter of major strategic interest to the United States;

(2) the United States and the Republic of China have for a period of twenty-four years been linked together by the Mutual Defense Treaty of 1954;

(3) the Republic of China has during that twenty-four-year period faithfully and continually carried out its duties and obligations under that treaty; and

(4) it is the responsibility of the Senate to give its advice and consent to treaties entered into by the United States.

(b) It is the sense of the Congress that there should be prior consultation between the Congress and the executive branch on any proposed policy changes affecting the continuation in force of the Mutual Defense Treaty of 1954.

Congressional Record, 95th Cong., 2d sess., No. 138 (September 7, 1978), p. H9229.
The amendment was adopted by the Congress on September 12, 1978.

DOCUMENT 2**Joint Communiqué on the Establishment of Diplomatic Relations
between the United States of America and the People's Republic
of China, January 1, 1979**

(The communiqué was released on December 15, 1978\in Washington and Peking).

The United States of America and the People's Republic of China have agreed to recognize each other and to establish diplomatic relations as of January 1, 1979.

The United States of America recognizes the Government of the People's Republic of China as the sole legal Government of China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan.

The United States of America and the People's Republic of China reaffirm the principles agreed on by the two sides in the Shanghai Communiqué and emphasize once again that:

- Both wish to reduce the danger of international military conflict.
- Neither should seek hegemony in the Asia-Pacific region or in any other region of the world and each is opposed to efforts by any other country or group of countries to establish such hegemony.
- Neither is prepared to negotiate on behalf of any third party or to enter into agreements or understandings with the other directed at other states.
- The Government of the United States of America acknowledges* the Chinese position that there is but one China and Taiwan is part of China.
- Both believe that normalization of Sino-American relations is not only in the interest of the Chinese and American peoples but also contributes to the cause of peace in Asia and the world.

The United States of America and the People's Republic of China will exchange Ambassadors and establish Embassies on March 1, 1979.

*The Chinese text translated the word "acknowledges" into *Cheng-jen*, which, if retranslated into English, would mean "recognize."

Department of State Bulletin 79, no. 2022 (January 1979): 25.

DOCUMENT 3**United States Statement Accompanying the Joint Communiqué on the Establishment of Diplomatic Relations between the United States and the People's Republic of China, December 15, 1978**

As of January 1, 1979, the United States of America recognizes the People's Republic of China as the sole legal government of China. On the same date, the People's Republic of China accords similar recognition to the United States of America. The United States thereby establishes diplomatic relations with the People's Republic of China.

On that same date, January 1, 1979, the United States of America will notify Taiwan that it is terminating diplomatic relations and that the Mutual Defense Treaty between the United States and the Republic of China is being terminated in accordance with the provisions of the Treaty. The United States also states that it will be withdrawing its remaining military personnel from Taiwan within four months.

In the future, the American people and the people of Taiwan will maintain commercial, cultural, and other relations without official government representation and without diplomatic relations.

The Administration will seek adjustments to our laws and regulations to permit the maintenance of commercial, cultural, and other nongovernmental relationships in the new circumstances that will exist after normalization.

The United States is confident that the people of Taiwan face a peaceful and prosperous future. The United States continues to have an interest in the peaceful resolution of the Taiwan issue and expects that the Taiwan issue will be settled peacefully by the Chinese themselves.

The United States believes that the establishment of diplomatic relations with the People's Republic will contribute to the welfare of the American people, to the stability of Asia where the United States has major security and economic interest, and to the peace of the entire world.

DOCUMENT 4**People's Republic of China Statement Accompanying the Joint
Communique on the Establishment of Diplomatic Relations between
the United States and the PRC, December 15, 1978**

As of January 1, 1979, the People's Republic of China and the United States of America recognize each other and establish diplomatic relations, thereby ending the prolonged abnormal relationship between them. This is a historic event in Sino-U.S. relations.

As is known to all, the Government of the People's Republic of China is the sole legal Government of China and Taiwan is a part of China. The question of Taiwan was the crucial issue obstructing the normalization of relations between China and the United States. It has now been resolved between the two countries in the spirit of the Shanghai Communique and through their joint efforts, thus enabling the normalization of relations so ardently desired by the people of the two countries. As for the way of bringing Taiwan back to the embrace of the motherland and reunifying the country, it is entirely China's internal affair.

At the invitation of the U.S. Government, Teng Hsiao-ping, Vice-Premier of the State Council of the People's Republic of China, will pay an official visit to the United States in January 1979, with a view to further promoting the friendship between the two peoples and good relations between the two countries.

DOCUMENT 5**Chairman Hua's Press Conference on Establishing Diplomatic Relations with the United States, Peking, December 16, 1978**

Hua Kuo-feng, Chairman of the Central Committee of the Communist Party of China and Premier of the State Council, gave a press conference in Peking's Great Hall of the People on the morning of December 16 in connection with the establishment of diplomatic relations between the People's Republic of China and the United States of America.

Chairman Hua started the press conference by reading out the joint communique on the establishment of diplomatic relations between China and the United States and the statement of the Government of the People's Republic of China. He then answered questions from newsmen.

Question: Chairman Hua, will you please speak about the significance of the normalization of Sino-U.S. relations?

Answer: The normalization of Sino-U.S. relations has long been a wish of the Chinese and American peoples. Our great leader the late Chairman Mao Tse-tung and our esteemed Premier Chou En-lai paved the way for opening Sino-U.S. relations. During the visit of President Nixon and Dr. Kissinger to China in 1972, the Chinese and U.S. sides issued the Shanghai Communique, which started the process of normalizing Sino-U.S. relations. Thanks to the joint efforts of the leaders, governments and peoples of the two countries in the past few years, Sino-U.S. relations have now been normalized. Former U.S. President Ford, many of the senators and congressmen and other friends from all walks of life have all played their part towards this end. Now, President Carter, Dr. Brzezinski and Secretary of State Vance have all made valuable contributions to the eventual normalization of our relations.

The establishment of diplomatic relations between China and the United States is a historic event. It opens up broad vistas for enhancing understanding and friendship between the two peoples and promoting bilateral exchanges in all fields. It will also contribute to peace and stability in Asia and the world as a whole. The Chinese and American peoples are happy about it and I believe the people all over the world will be happy at the news too.

Q: Chairman Hua, my question is: What policy will the Chinese Government adopt towards Taiwan in the new circumstances when relations between China and the United States have been normalized?

A: Taiwan is part of China's sacred territory and the people in Taiwan are our kith and kin. It is the common aspiration of all the Chinese people including our compatriots in Taiwan to accomplish the great cause of reunifying the coun-

try with Taiwan returning to the embrace of the motherland. It has been our consistent policy that all patriots belong to one big family whether they come forward early or late. We hope that our compatriots in Taiwan will join all the other Chinese people including our compatriots in Hongkong and Macao and overseas Chinese in making further contributions to the cause of reunifying China.

Q: Can you say that after normalization China will object to a visit to Taiwan by an American official?

A: The relations between China and the United States have been normalized after the joint efforts of both sides which have reached an agreement and have now issued the joint communique. And the answer to your question is clearly stated in the joint communique which I quote: "The United States of America recognizes the Government of the People's Republic of China as the sole legal Government of China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan." So the answer is very clear in this paragraph. There will only be unofficial relations.

Q: Will the United States be permitted to continue providing Taiwan with access to military equipment for defensive purposes?

A: Paragraph two of the joint communique which I announced just now says: "The United States of America recognizes the Government of the People's Republic of China as the sole legal Government of China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan." In our discussions on the question of the commercial relations, the two sides had differing views. During the negotiations the U.S. side mentioned that after normalization it would continue to sell limited amount of arms to Taiwan for defensive purposes. We made it clear that we absolutely would not agree to this. In all discussions the Chinese side repeatedly made clear its position on this question. We held that after the normalization continued sales of arms to Taiwan by the United States would not conform to the principles of the normalization, would be detrimental to the peaceful liberation of Taiwan and would exercise an unfavourable influence on the peace and stability of the Asia-Pacific region. So our two sides had differences on this point. Nevertheless, we reached an agreement on the joint communique.

Q: Mr. Chairman, may I ask you please about the possibility of a worsening of relations with Russia as a result of what you have announced today, since the Russians may be very suspicious of your joining more closely with the Americans. Do you feel that it may lead to a worsening of relations with Moscow?

A: We think that the normalization of relations between China and the United States and the signing of the Treaty of Peace and Friendship Between China and Japan are conducive to peace and stability in the Asia-Pacific region and the world as a whole. Does this mean the formation of an axis or alliance of China, Japan and the United States? We say that it is neither an alliance nor an axis. China and the United States have now normalized their relations and the relations between the United States and the Soviet Union have also been normalized. Therefore it is out of the question that the normalization of relations is directed at any country.

Here I would like to make an additional explanation. China has now normalized relations with the United States and Japan and signed a treaty of peace and friendship with Japan. This is beneficial to the development of relations between countries in the Asia-Pacific region and to the peace and stability of the Asia-Pacific region and the world as a whole. Undoubtedly, of course, it is also favourable to the struggle of all peoples against hegemonism. We have mentioned our opposition to hegemonism in our joint communique. We oppose both big hegemony and small hegemony, both global hegemony and regional hegemony. This will be conducive to the peace of the whole world.

Q: I would like to ask you if there were any Chinese compatriots from Taiwan involved at any stage in the discussions towards normalization?

A: No.

Huang Hua, Chinese Foreign Minister, and Chang Wen-chin, Vice-Foreign Minister, attended the press conference. More than 100 Chinese and foreign correspondents were present.

DOCUMENT 6**President Chiang Ching-kuo's Five Principles on U.S.-ROC Relations in the Postnormalization Period, December 29, 1978**

[President Chiang Ching-kuo informed Deputy Secretary of State Christopher that future ties between the Republic of China and the United States must rest on five underlying principles—reality, continuity, security, legality, and governmentality. The President's statement is summarized by Dr. James Chu-yul Soong, Deputy-Director of the Government Information Office, as follows:]

The Republic of China is an independent sovereign state with a legitimately established government based on the Constitution of the Republic of China. It is an effective government, which has the wholehearted support of her people. The international status and personality of the Republic of China cannot be changed merely because of the recognition of the Chinese Communist regime by any country of the world. The legal status and international personality of the Republic of China is a simple reality which the United States must recognize and respect.

The United States has expressed its intention that it will continue to maintain cultural, economic, trade, scientific, technological, and travel relations with the Republic of China. The ties that bound our two countries and people together in the past, however, include much more than these. The Republic of China is ready and willing to continue these traditional ties. The United States, on the other hand, must also realize the importance of the continuity of these ties, not only in their present scope, but also on an expanded scale to meet future needs.

The security of the Asian-Pacific region is also of utmost importance to the well-being and livelihood of the 17 million people on Taiwan, as well as American interests in the area.

The Sino-U.S. Mutual Defense Treaty signed in 1954 was designed to be a vital link in the chain of collective defense system of free countries in the West Pacific. The situation in this region has not changed. It is still unstable and insecure. The threat of invasion and subversion by Communist forces to the free nations of Asia, particularly after the fall of Vietnam, is even more serious than before.

Hence, the U.S. unilateral action to terminate the Sino-U.S. Mutual Defense Treaty will further destabilize this region and might create a new crisis of war. Thus, in order to ensure the peace and security of the West Pacific, which includes that of the Republic of China, it is imperative that the United States

take concrete and effective measures to renew its assurances to countries in this region.

We are ready and determined to continue to do our share in securing stability and peace in the West Pacific. But in order to do this, we must have sufficient capabilities to defend ourselves, and thereby protect our neighbors. President Carter has indicated that he is still concerned about the peace, security, and prosperity of this region after the termination of the Sino-U.S. Mutual Defense Treaty, and will continue to supply the Republic of China with defense weapons. The U.S. must give us assurances of a legal nature which would ensure the fulfillment of this commitment.

We are at present faced with the pragmatic problems involved in continuing and maintaining 59 treaties and agreements, as well as other arrangements, between our two countries. Since both the Republic of China and the United States are governed by law, the private interests of both Chinese and American citizens require the protection of definite legal provisions. Appropriate legislative measures in both countries must therefore be taken to provide legal basis on which these security, commercial, and cultural treaties and agreements can continue to remain in full force and effect.

The complex nature of the activities of mutual interest to our two countries makes it impossible for them to be carried out by any private organization or individual. To facilitate the continuation and expansion of all relations between our two countries, it is necessary that government-to-government level mechanisms be set up in Taipei and Washington. This model alone can serve as the framework on which the future relationship of our two countries can be constructed.

DOCUMENT 7**ROC Statement on U.S. Termination of Mutual Defense Treaty,
January 2, 1979**

(On January 1, 1979, the U.S. government notified the ROC government of its decision to terminate the Mutual Defense Treaty as of December 31, 1979. In response to that notice, the ROC Government issued the following statement.)

The government of the Republic of China has scrupulously observed its obligations under the Mutual Defense Treaty, and has never violated any provisions of that treaty. For the U.S. government to unilaterally give notice of termination for no justifiable ground is wholly unthinkable.

In accordance with the principles of international law, the cause and spirit constitute the basis of the provisions of a treaty. To terminate the Mutual Defense Treaty unilaterally without prior consultations violates the basic spirit of the provisions of that treaty.

There has been no vital change of circumstances since the signing of the Mutual Defense Treaty and the termination of the treaty can never be justified on the ground of *rebus sic stantibus* (the principle of changed circumstances).

The government of the Republic of China deplores the unilateral termination of the Mutual Defense Treaty and has lodged its strong protest with the government of the United States. . . .

News from China, P. 79-0002 (January 2, 1979).

TAIWAN RELATIONS ACT

93 STAT. 14

PUBLIC LAW 96-8—APR. 10, 1979

Public Law 96-8
96th Congress

An Act

Apr. 10, 1979
[H.R. 2479]

To help maintain peace, security, and stability in the Western Pacific and to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan, and for other purposes.

Taiwan Relations
Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

22 USC 3301
note.

SECTION 1. This Act may be cited as the "Taiwan Relations Act".

FINDINGS AND DECLARATION OF POLICY

22 USC 3301.

SEC. 2. (a) The President having terminated governmental relations between the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, the Congress finds that the enactment of this Act is necessary—

(1) to help maintain peace, security, and stability in the Western Pacific; and

(2) to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan.

(b) It is the policy of the United States—

(1) to preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the United States and the people on Taiwan, as well as the people on the China mainland and all other peoples of the Western Pacific area;

(2) to declare that peace and stability in the area are in the political, security, and economic interests of the United States, and are matters of international concern;

(3) to make clear that the United States decision to establish diplomatic relations with the People's Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means;

(4) to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States;

(5) to provide Taiwan with arms of a defensive character; and

(6) to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.

(c) Nothing contained in this Act shall contravene the interest of the United States in human rights, especially with respect to the

human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States.

IMPLEMENTATION OF UNITED STATES POLICY WITH REGARD TO TAIWAN

SEC. 3. (a) In furtherance of the policy set forth in section 2 of this Act, the United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.

U.S. defense
articles and
services,
availability to
Taiwan.
22 USC 3302.

(b) The President and the Congress shall determine the nature and quantity of such defense articles and services based solely upon their judgment of the needs of Taiwan, in accordance with procedures established by law. Such determination of Taiwan's defense needs shall include review by United States military authorities in connection with recommendations to the President and the Congress.

Defense review.

(c) The President is directed to inform the Congress promptly of any threat to the security or the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom. The President and the Congress shall determine, in accordance with constitutional processes, appropriate action by the United States in response to any such danger.

Security threat to
Taiwan,
Presidential
report to
Congress.

APPLICATION OF LAWS; INTERNATIONAL AGREEMENTS

SEC. 4. (a) The absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to January 1, 1979.

22 USC 3303.

(b) The application of subsection (a) of this section shall include, but shall not be limited to, the following:

(1) Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.

(2) Whenever authorized by or pursuant to the laws of the United States to conduct or carry out programs, transactions, or other relations with respect to foreign countries, nations, states, governments, or similar entities, the President or any agency of the United States Government is authorized to conduct and carry out, in accordance with section 6 of this Act, such programs, transactions, and other relations with respect to Taiwan (including, but not limited to, the performance of services for the United States through contracts with commercial entities on Taiwan), in accordance with the applicable laws of the United States.

(3)(A) The absence of diplomatic relations and recognition with respect to Taiwan shall not abrogate, infringe, modify, deny, or otherwise affect in any way any rights or obligations (including but not limited to those involving contracts, debts, or property interests of any kind) under the laws of the United States heretofore or hereafter acquired by or with respect to Taiwan.

(B) For all purposes under the laws of the United States, including actions in any court in the United States, recognition of the People's Republic of China shall not affect in any way the ownership of or other rights or interests in properties, tangible

and intangible, and other things of value, owned or held on or prior to December 31, 1978, or thereafter acquired or earned by the governing authorities on Taiwan.

(4) Whenever the application of the laws of the United States depends upon the law that is or was applicable on Taiwan or compliance therewith, the law applied by the people on Taiwan shall be considered the applicable law for that purpose.

(5) Nothing in this Act, nor the facts of the President's action in extending diplomatic recognition to the People's Republic of China, the absence of diplomatic relations between the people on Taiwan and the United States, or the lack of recognition by the United States, and attendant circumstances thereto, shall be construed in any administrative or judicial proceeding as a basis for any United States Government agency, commission, or department to make a finding of fact or determination of law, under the Atomic Energy Act of 1954 and the Nuclear Non-Proliferation Act of 1978, to deny an export license application or to revoke an existing export license for nuclear exports to Taiwan.

(6) For purposes of the Immigration and Nationality Act, Taiwan may be treated in the manner specified in the first sentence of section 202(b) of that Act.

(7) The capacity of Taiwan to sue and be sued in courts in the United States, in accordance with the laws of the United States, shall not be abrogated, infringed, modified, denied, or otherwise affected in any way by the absence of diplomatic relations or recognition.

(8) No requirement, whether expressed or implied, under the laws of the United States with respect to maintenance of diplomatic relations or recognition shall be applicable with respect to Taiwan.

(c) For all purposes, including actions in any court in the United States, the Congress approves the continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until terminated in accordance with law.

(d) Nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization.

OVERSEAS PRIVATE INVESTMENT CORPORATION

SEC. 5. (a) During the three-year period beginning on the date of enactment of this Act, the \$1,000 per capita income restriction in clause (2) of the second undesignated paragraph of section 231 of the Foreign Assistance Act of 1961 shall not restrict the activities of the Overseas Private Investment Corporation in determining whether to provide any insurance, reinsurance, loans, or guaranties with respect to investment projects on Taiwan.

(b) Except as provided in subsection (a) of this section, in issuing insurance, reinsurance, loans, or guaranties with respect to investment projects on Taiwan, the Overseas Private Insurance Corporation shall apply the same criteria as those applicable in other parts of the world.

42 USC 2011
note.
22 USC 3201
note.

8 USC 1152.

Treaties and
other
international
agreements,
congressional
approval.

Investment
projects,
insurance,
reinsurance,
loans or
guaranties.
22 USC 3304.
22 USC 2191.

THE AMERICAN INSTITUTE OF TAIWAN

SEC. 6. (a) Programs, transactions, and other relations conducted or carried out by the President or any agency of the United States Government with respect to Taiwan shall, in the manner and to the extent directed by the President, be conducted and carried out by or through— 22 USC 3305.

(1) The American Institute in Taiwan, a nonprofit corporation incorporated under the laws of the District of Columbia, or

(2) such comparable successor nongovernmental entity as the President may designate,

(hereafter in this Act referred to as the "Institute").

(b) Whenever the President or any agency of the United States Government is authorized or required by or pursuant to the laws of the United States to enter into, perform, enforce, or have in force an agreement or transaction relative to Taiwan, such agreement or transaction shall be entered into, performed, and enforced, in the manner and to the extent directed by the President, by or through the Institute.

(c) To the extent that any law, rule, regulation, or ordinance of the District of Columbia, or of any State or political subdivision thereof in which the Institute is incorporated or doing business, impedes or otherwise interferes with the performance of the functions of the Institute pursuant to this Act, such law, rule, regulation, or ordinance shall be deemed to be preempted by this Act.

SERVICES BY THE INSTITUTE TO UNITED STATES CITIZENS ON TAIWAN

SEC. 7. (a) The Institute may authorize any of its employees on Taiwan— 22 USC 3306.

(1) to administer to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to perform within the United States;

(2) To act as provisional conservator of the personal estates of deceased United States citizens; and

(3) to assist and protect the interests of United States persons by performing other acts such as are authorized to be performed outside the United States for consular purposes by such laws of the United States as the President may specify.

(b) Acts performed by authorized employees of the Institute under this section shall be valid, and of like force and effect within the United States, as if performed by any other person authorized under the laws of the United States to perform such acts.

TAX EXEMPT STATUS OF THE INSTITUTE

SEC. 8. (a) The Institute, its property, and its income are exempt from all taxation now or hereafter imposed by the United States (except to the extent that section 11(a)(3) of this Act requires the imposition of taxes imposed under chapter 21 of the Internal Revenue Code of 1954, relating to the Federal Insurance Contributions Act) or by any State or local taxing authority of the United States. 22 USC 3307.
26 USC 401.

(b) For purposes of the Internal Revenue Code of 1954, the Institute shall be treated as an organization described in sections 170(b)(1)(A), 170(c), 2055(a), 2106(a)(2)(A), 2522(a), and 2522(b).

26 USC 170,
2055, 2106,
2522.

**FURNISHING PROPERTY AND SERVICES TO AND OBTAINING SERVICES
FROM THE INSTITUTE**

22 USC 3308.

SEC. 9. (a) Any agency of the United States Government is authorized to sell, loan, or lease property (including interests therein) to, and to perform administrative and technical support functions and services for the operations of, the Institute upon such terms and conditions as the President may direct. Reimbursements to agencies under this subsection shall be credited to the current applicable appropriation of the agency concerned.

(b) Any agency of the United States Government is authorized to acquire and accept services from the Institute upon such terms and conditions as the President may direct. Whenever the President determines it to be in furtherance of the purposes of this Act, the procurement of services by such agencies from the Institute may be effected without regard to such laws of the United States normally applicable to the acquisition of services by such agencies as the President may specify by Executive order.

(c) Any agency of the United States Government making funds available to the Institute in accordance with this Act shall make arrangements with the Institute for the Comptroller General of the United States to have access to the books and records of the Institute and the opportunity to audit the operations of the Institute.

TAIWAN INSTRUMENTALITY

22 USC 3309.

SEC. 10. (a) Whenever the President or any agency of the United States Government is authorized or required by or pursuant to the laws of the United States to render or provide to or to receive or accept from Taiwan, any performance, communication, assurance, undertaking, or other action, such action shall, in the manner and to the extent directed by the President, be rendered or provided to, or received or accepted from, an instrumentality established by Taiwan which the President determines has the necessary authority under the laws applied by the people on Taiwan to provide assurances and take other actions on behalf of Taiwan in accordance with this Act.

(b) The President is requested to extend to the instrumentality established by Taiwan the same number of offices and complement of personnel as were previously operated in the United States by the governing authorities on Taiwan recognized as the Republic of China prior to January 1, 1979.

(c) Upon the granting by Taiwan of comparable privileges and immunities with respect to the Institute and its appropriate personnel, the President is authorized to extend with respect to the Taiwan instrumentality and its appropriate personnel, such privileges and immunities (subject to appropriate conditions and obligations) as may be necessary for the effective performance of their functions.

**SEPARATION OF GOVERNMENT PERSONNEL FOR EMPLOYMENT WITH THE
INSTITUTE**

22 USC 3310.

SEC. 11. (a)(1) Under such terms and conditions as the President may direct, any agency of the United States Government may separate from Government service for a specified period any officer or employee of that agency who accepts employment with the Institute.

(2) An officer or employee separated by an agency under paragraph (1) of this subsection for employment with the Institute shall be

entitled upon termination of such employment to reemployment or reinstatement with such agency (or a successor agency) in an appropriate position with the attendant rights, privileges, and benefits with the officer or employee would have had or acquired had he or she not been so separated, subject to such time period and other conditions as the President may prescribe.

(3) An officer or employee entitled to reemployment or reinstatement rights under paragraph (2) of this subsection shall, while continuously employed by the Institute with no break in continuity of service, continue to participate in any benefit program in which such officer or employee was participating prior to employment by the Institute, including programs for compensation for job-related death, injury, or illness; programs for health and life insurance; programs for annual, sick, and other statutory leave; and programs for retirement under any system established by the laws of the United States; except that employment with the Institute shall be the basis for participation in such programs only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the program's or system's fund or depository. Death or retirement of any such officer or employee during approved service with the Institute and prior to reemployment or reinstatement shall be considered a death in or retirement from Government service for purposes of any employee or survivor benefits acquired by reason of service with an agency of the United States Government.

Reemployment or
reinstatement
rights.

(4) Any officer or employee of an agency of the United States Government who entered into service with the Institute on approved leave of absence without pay prior to the enactment of this Act shall receive the benefits of this section for the period of such service.

Officer or
employee
previously
employed by
U.S., benefits.
Alien personnel
employed by
U.S., transfer.

(b) Any agency of the United States Government employing alien personnel on Taiwan may transfer such personnel, with accrued allowances, benefits, and rights, to the Institute without a break in service for purposes of retirement and other benefits, including continued participation in any system established by the laws of the United States for the retirement of employees in which the alien was participating prior to the transfer to the Institute, except that employment with the Institute shall be creditable for retirement purposes only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the system's fund or depository.

(c) Employees of the Institute shall not be employees of the United States and, in representing the Institute, shall be exempt from section 207 of title 18, United States Code.

(d)(1) For purposes of sections 911 and 913 of the Internal Revenue Code of 1954, amounts paid by the Institute to its employees shall not be treated as earned income. Amounts received by employees of the Institute shall not be included in gross income, and shall be exempt from taxation, to the extent that they are equivalent to amounts received by civilian officers and employees of the Government of the United States as allowances and benefits which are exempt from taxation under section 912 of such Code.

26 USC 911,
913.

26 USC 912.

(2) Except to the extent required by subsection (a)(3) of this section, service performed in the employ of the Institute shall not constitute employment for purposes of chapter 21 of such Code and title II of the Social Security Act.

26 USC 3101.
42 USC 401.

REPORTING REQUIREMENT

Agreement, transmittal to Congress or congressional committees. 22 USC 3311.	<p>SEC. 12. (a) The Secretary of State shall transmit to the Congress the text of any agreement to which the Institute is a party. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President.</p>
"Agreement."	<p>(b) For purposes of subsection (a), the term "agreement" includes—</p> <p>(1) any agreement entered into between the Institute and the governing authorities on Taiwan or the instrumentality established by Taiwan; and</p> <p>(2) any agreement entered into between the Institute and an agency of the United States Government.</p>
Agreements and transactions made by the Institute.	<p>(c) Agreements and transactions made or to be made by or through the Institute shall be subject to the same congressional notification, review, and approval requirements and procedures as if such agreements and transactions were made by or through the agency of the United States Government on behalf of which the Institute is acting.</p>
Report to Speaker of the House and Senate Foreign Relations Committee.	<p>(d) During the two-year period beginning on the effective date of this Act, the Secretary of State shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, every six months, a report describing and reviewing economic relations between the United States and Taiwan, noting any interference with normal commercial relations.</p>

RULES AND REGULATIONS

22 USC 3312.	<p>SEC. 13. The President is authorized to prescribe such rules and regulations as he may deem appropriate to carry out the purposes of this Act. During the three-year period beginning on the effective date of this Act, such rules and regulations shall be transmitted promptly to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate. Such action shall not, however, relieve the Institute of the responsibilities placed upon it by this Act.</p>
Transmittal to Speaker of the House and Senate Foreign Relations Committee.	

CONGRESSIONAL OVERSIGHT

22 USC 3313.	<p>SEC. 14. (a) The Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and other appropriate committees of the Congress shall monitor—</p> <p>(1) the implementation of the provisions of this Act;</p> <p>(2) the operation and procedures of the Institute;</p> <p>(3) the legal and technical aspects of the continuing relationship between the United States and Taiwan; and</p> <p>(4) the implementation of the policies of the United States concerning security and cooperation in East Asia.</p>
Reports.	<p>(b) Such committees shall report, as appropriate, to their respective Houses on the results of their monitoring.</p>

DEFINITIONS

22 USC 3314.	<p>SEC. 15. For purposes of this Act—</p>
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(1) the term "laws of the United States" includes any statute, rule, regulation, ordinance, order, or judicial rule of decision of the United States or any political subdivision thereof; and

"Laws of the United States."

(2) the term "Taiwan" includes, as the context may require, the islands of Taiwan and the Pescadores, the people on those islands, corporations and other entities and associations created or organized under the laws applied on those islands, and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and any successor governing authorities (including political subdivisions, agencies, and instrumentalities thereof).

"Taiwan."

AUTHORIZATION OF APPROPRIATIONS

SEC. 16. In addition to funds otherwise available to carry out the provisions of this Act, there are authorized to be appropriated to the Secretary of State for the fiscal year 1980 such funds as may be necessary to carry out such provisions. Such funds are authorized to remain available until expended.

22 USC 3315.

SEVERABILITY OF PROVISIONS

SEC. 17. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person or circumstance shall not be affected thereby.

22 USC 3316.

EFFECTIVE DATE

SEC. 18. This Act shall be effective as of January 1, 1979.

22 USC 3301
note.

Approved April 10, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 96-26 (Comm. on Foreign Affairs) and No. 96-71 (Comm. of Conference).

SENATE REPORT No. 96-7 (Comm. on Foreign Relations).

CONGRESSIONAL RECORD, Vol. 125 (1979):

Mar. 8, 13, considered and passed House.

Mar. 7, 8, 12, 13, S. 245 considered and passed Senate.

Mar. 14, proceedings vitiated; H.R. 2479, amended, passed in lieu.

Mar. 28, House agreed to conference report.

Mar. 29, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 15, No. 15:

Apr. 10, Presidential statement.

DOCUMENT 9**Presidential Executive Order 12143
of June 22, 1979****MAINTAINING UNOFFICIAL RELATIONS WITH
THE PEOPLE ON TAIWAN**

In light of the recognition of the People's Republic of China by the United States of America as the sole legal government of China, and by the authority vested in me as President of the United States of America, by the Taiwan Relations Act (Public Law 96-8, 93 Stat. 14, 22 U.S.C. 3301 *et seq.*, hereinafter referred to as "the Act"), and Section 301 of Title 3 of the United States Code, in order to facilitate the maintenance of commercial, cultural and other relations between the people of the United States and the people on Taiwan without official representation or diplomatic relations, it is hereby ordered as follows:

1-1. *Delegation and Reservation of Functions.*

1-101. Exclusive of the functions otherwise delegated, or reserved to the President, by this Order, there are delegated to the Secretary of State all functions conferred upon the President by the Act. In carrying out these functions, the Secretary of State shall consult with other departments and agencies as appropriate.

1-102. There are delegated to the Director of the Office of Personnel Management the functions conferred upon the President by paragraphs (1) and (2) of Section 11(a) of the Act. These functions shall be exercised in consultation with the Secretary of State.

1-103. There are reserved to the President the functions conferred upon the President by Section 3, Section 7(a)(3), and the second sentence of Section 9(b), and the determination specified in Section 10(a) of the Act.

1-2. *Specification of Laws and Determinations.*

1-201. Pursuant to Section 7(a) of the Act, I specify the following provisions of law:

(a) Section 4082 of the Revised Statutes (22 U.S.C. 1172):

§ 1172. Solemnization of marriages

Marriages in presence of any consular officer of the United States in a foreign country, between persons who

would be authorized to marry if residing in the District of Columbia, shall be valid to all intents and purposes, and shall have the same effect as if solemnized within the United States. And such consular officer shall, in all cases, give to the parties married before them a certificate of such marriage, and shall send another certificate thereof to the Department of State, there to be kept; such certificate shall specify the names of the parties, their ages, places of birth, and residence.

- (b) Section 1707 of the Revised Statutes (22 U.S.C. 1173):

§ 1173. Protests

Consuls and vice consuls shall have the right, in the ports or places to which they are severally appointed, of receiving the protests or declarations which captains, masters, crews, passengers, or merchants, who are citizens of the United States, may respectively choose to make there; and also such as any foreigner may choose to make before them relative to the personal interest of any citizen of the United States.

- (c) Section 1708 of the Revised Statutes (22 U.S.C. 1174):

§ 1174. Lists and returns of seamen and vessels, etc.

Every consular officer shall keep a detailed list of all seamen and mariners shipped and discharged by him, specifying their names and the names of the vessels on which they are shipped and from which they are discharged, and the payments, if any, made on account of each so discharged; also of the number of the vessels arrived and departed, the amounts of their registered tonnage, and the number of their seamen and mariners, and of those who are protected, and whether citizens of the United States or not, and as nearly as possible the nature and value of their cargoes, and where produced, and shall make returns of the same, with their accounts and other returns, to the Secretary of Commerce.

(d) Section 1709 of the Revised Statutes, as amended (22 U.S.C. 1175:

§ 1175. Estates of decedents generally; General Accounting Office as conservator

It shall be the duty of a consular officer, or, if no consular officer is present, a diplomatic officer, under such procedural regulations as the Secretary of State may prescribe—

First. To take possession and to dispose of the personal estate left by any citizen of the United States, except a seaman who is a member of the crew of an American vessel, who shall die within or is domiciled at time of death within his jurisdiction: *Provided*, That such procedure is authorized by treaty provisions or permitted by the laws or authorities of the country wherein the death occurs, or the decedent is domiciled, or that such privilege is accorded by established usage: *Provided further*, That the decedent shall leave in the country where the death occurred or where he was domiciled, no legal representative, partner in trade, or trustee by him appointed to take care of his personal estate. A consular officer or, in his absence, a diplomatic officer shall act as the provisional conservator of the personal property within his jurisdiction of a deceased citizen of the United States but, unless authorized by treaty provisions, local law, or usage, he shall not act as administrator of such personal property. He shall render assistance in guarding, collecting, and transmitting the property to the United States to be disposed of according to the law of the decedent's domicile.

Second. After having taken possession of the personal property, as provisional conservator, to inventory and carefully appraise the effects, article by article, with the assistance of two competent persons who, together with such officer, shall sign the inventory and annex thereto an appropriate certificate as to the accuracy of the appraised value of each article.

Third. To collect the debts due to the decedent in his jurisdiction and pay from the estate the obligations owed there by the decedent.

Fourth. To sell at auction, after reasonable public notice, unless the amount involved does not justify such expenditure, such part of the estate as shall be of a perishable nature, and after reasonable public notice and

notice to next of kin if they can be ascertained by reasonable diligence such further part, if any, as shall be necessary for the payment of the decedent's debts incurred in such country, and funeral expenses, and expenses incident to the disposition of the estate. If, at the expiration of one year from the date of death (or for such additional period as may be required for final settlement of the estate), no claimant shall appear, the residue of the estate, with the exception of investments of bonds, shares of stocks, notes of indebtedness, jewelry or heirlooms, or other articles having a sentimental value, shall be sold.

Fifth. To transmit to the General Accounting Office the proceeds of the sale (and any unsold effects, such as investments of bonds, shares of stocks, notes of indebtedness, jewelry or heirlooms, or other articles having a sentimental value), there to be held in trust for the legal claimant. If, however, at any time prior to such transmission, the decedent's legal representative should appear and demand the proceeds and effects in the officer's hands, he shall deliver them to such representative after having collected the prescribed fee therefor.

The Comptroller General of the United States, or such member of the General Accounting Office as he may duly empower to act as his representative for the purpose, shall act as conservator of such parts of these estates as may be received by the General Accounting Office or are in its possession, and may, when deemed to be in the interest of the estate, sell such effects, including bonds, shares of stock, notes of indebtedness, jewelry, or other articles, which have heretofore or may hereafter be so received, and pay the expenses of such sale out of the proceeds: *Provided*, That application for such effects shall not have been made by the legal claimant within six years after their receipt. The Comptroller General is authorized, for and in behalf of the estate of the deceased, to receive any balances due to such estates, to draw therefor on banks, safe deposits, trust or loan companies; or other like institutions, to endorse all checks, bills of exchange, promissory notes, and other evidences of indebtedness due to such estates, and take such other action as may be deemed necessary for the conservation of such estates. The net proceeds of such sales, together with such other moneys as may be collected by him, shall be deposited into the Treasury to a fund in trust for the legal claimant and reported to the Secretary of State.

If no claim to the effects the proceeds of which have been so deposited shall have been received from a legal claimant of the deceased within six years from the date of the receipt of the effects by the General Accounting Office, the funds so deposited, with any remaining unsold effects, less transmittal charges, shall be transmitted by that office to the proper officer of the State or Territory of the last domicile in the United States of the deceased citizen, if known, or, if not, such funds shall be covered into the general fund of the Treasury as miscellaneous receipts on account of proceeds of deceased citizens, and any such remaining unsold effects shall be disposed of by the General Accounting Office in such manner as, in the judgment of the Comptroller General, is deemed appropriate, or they may be destroyed if considered no longer possessed of any value: *Provided*, That when the estate shall be valued in excess of \$500, and no claim therefor has been presented to the General Accounting Office by a legal claimant within the period specified in this paragraph or the legal claimant is unknown, before disposition of the estate as provided herein, notice shall be given by publishing once a week for four consecutive weeks in a newspaper published in the county of the last known domicile of the deceased, in the United States, the expense thereof to be deducted from the proceeds of such estate, and any lawful claim received as the result of such advertisement shall be adjusted and settled as provided for herein.

(e) Section 1710 of the Revised Statutes, as amended (22 U.S.C. 1176):

§ 1176. Notification of death of decedent; transmission of inventory of effects

For the information of the representative of the deceased, the consular officer, or, if no consular officer is present, a diplomatic officer, in the settlement of his estate shall immediately notify his death in one of the gazettes published in the consular district, and also to the Secretary of State, that the same may be notified in the State to which the deceased belonged; and he shall, as soon as may be, transmit to the Secretary of State an inventory of the effects of the deceased taken as before directed.

(f) Section 1711 of the Revised Statutes, as amended (22 U.S.C. 1177):

§ 1177. Following testamentary directions; assistance to testamentary appointee

When a citizen of the United States dies in a foreign country and leaves, by any lawful testamentary disposition, special directions for the custody and management, by the consular officer, or in his absence a diplomatic officer, within whose jurisdiction the death occurred, of the personal property in the foreign country which he possessed at the time of death, such officer shall, so far as the laws of the foreign country permit, strictly observe such directions if not contrary to the laws of the United States. If such citizen has named, by any lawful testamentary disposition, any other person than a consular officer or diplomatic officer to take charge of and manage such property, it shall be the duty of the officer, whenever required by the person so named, to give his official aid in whatever way may be practicable to facilitate the proceedings of such person in the lawful execution of his trust, and, so far as the laws of the country or treaty provisions permit, to protect the property of the deceased from any interference by the authorities of the country where such citizen died. To this end it shall be the duty of the consular officer, or if no consular officer is present a diplomatic officer, to safeguard the decedent's property by placing thereon his official seal and to break and remove such seal only upon the request of the person designated by the deceased to take charge of and manage his property.

(g) Section 1718 of the Revised Statutes (22 U.S.C. 1185); and

§ 1185. Retention of papers of American vessels until payment of demands and wages

All consular officers are authorized and required to retain in their possession all the papers of vessels of the United States, which shall be deposited with them as directed by law, till payment shall be made of all demands and wages on account of such vessels.

(h) Section 7 of the Act of April 5, 1906 (22 U.S.C. 1195).

§ 1195. Notarial acts, oaths, affirmations, affidavits, and depositions; fees

Every consular officer of the United States is required, whenever application is made to him therefor, within the limits of his consulate, to administer to or take from any person any oath, affirmation, affidavit, or deposition, and to perform any other notarial act which any notary public is required or authorized by law to do within the United States; and for every such notarial act performed he shall charge in each instance the appropriate fee prescribed by the President under section 1201 of this title.

1-202. Pursuant to Section 9(b) of the Act, and in furtherance of the purposes of the Act, the procurement of services may be effected without regard to the following provisions of law and limitations of authority:

(a) Section 3648 of the Revised Statutes, as amended (31 U.S.C. 529);

(b) Section 9 of the Act of June 30, 1906 (31 U.S.C. 627), and Section 3679 and 3732 of the Revised Statutes (31 U.S.C. 665; 41 U.S.C. 11), to the extent necessary to permit the indemnification of contractors against unusually hazardous risks, as defined in Institute contracts, consistent, to the extent practicable, with regulations prescribed by the Department of Defense pursuant to the provisions of the Act of August 28, 1958 (50 U.S.C. 1431 *et seq.*), and Executive Order No. 10789 of November 14, 1958, as amended;

(c) Section 3709 of the Revised Statutes and Section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 5, 252);

(d) Section 3710 of the Revised Statutes (41 U.S.C. 8);

(e) Section 2 of Title III of the Act of March 3, 1933 (41 U.S.C. 10a);

(f) Section 3735 of the Revised Statutes (41 U.S.C. 13);

(g) Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)), so as to permit the payment of fees in excess of the prescribed fee limitations, but

nothing herein shall be construed as authorizing the use of the cost-plus-a-percentage-of-cost system of contracting;

(h) Section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255);

(i) Sections 2 through 16 of the Contract Disputes Act of 1978 (41 U.S.C. 601-613);

(j) Sections 2304, 2305 and 2306(a) through (f) of Title 10 of the United States Code, but nothing herein shall be construed as authorizing the use of the cost-plus-a-percentage-of-cost system of contracting; and

(k) Section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168).

1-203. (a) With respect to cost-type contracts with the American Institute in Taiwan under which no fee is charged or paid, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

(b) With respect to contracts heretofore or hereafter made under the Act, other than those described in subsection (a) of this Section, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof, if the Secretary of State determines in each case that such action is necessary to protect the foreign policy interests of the United States.

1-204. Pursuant to Section 10(a) of the Act, the Coordination Council for North American Affairs is determined to be the unofficial instrumentality established by the people on Taiwan having the necessary authority under the laws applied by the people on Taiwan to provide assurances and take other actions on behalf of Taiwan in accordance with the Act.

1-3. *President's Memorandum of December 30, 1978.*

1-301. This Order supersedes my memorandum of December 30, 1978 for all departments and agencies entitled "Relations With the People on Taiwan" (44 FR 1075). Agreements and arrangements referred to in paragraph (B) of that memorandum shall continue in force and shall be performed in accordance with the Act and this Order.

JIMMY CARTER

THE WHITE HOUSE,

June 22, 1979

(*Federal Registrar*, Vol. 44, No. 124

(June 26, 1979), pp. 37191-37192.)

DOCUMENT 10

**PEOPLE'S REPUBLIC OF CHINA-UNITED STATES:
AGREEMENT ON THE SETTLEMENT OF CLAIMS***

[Done at Beijing, May 11, 1979]

AGREEMENT BETWEEN THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF CHINA
CONCERNING THE SETTLEMENT OF CLAIMS

In order to develop bilateral economic and trade relations and to complete the process of normalization and in accordance with the spirit of the Joint Communiqué on Establishment of Diplomatic Relations between the United States of America and the People's Republic of China, the Government of the United States of America (hereinafter referred to as the "USA") and the Government of the People's Republic of China (hereinafter referred to as the "PRC") have reached this Agreement:

ARTICLE I

The claims settled pursuant to this Agreement are:

(a) the claims of the USA and its nationals (including natural and juridical persons) against the PRC arising from any nationalization, expropriation, intervention, and other taking of, or special measures directed against, property of nationals of the USA on or after October 1, 1949, and prior to the date of this Agreement; and

(b) the claims of the PRC, its nationals, and natural and juridical persons subject to its jurisdiction or control against the USA arising from actions related to the blocking of assets by the Government of the USA on or after December 17, 1950, and prior to the date of this Agreement.

ARTICLE II

(a) The Government of the USA and the Government of the PRC agree to a settlement of all claims specified in Article 1. The Government of the PRC agrees to pay to the Government of the USA the sum of \$80.5 million as

* Reproduced from the U.S. Department of State Press Release No. 133 (May 16, 1979).

the full and final settlement of the claims specified in Article 1. The Government of the USA agrees to accept this sum in full and final settlement of those claims.

(b) The Government of the USA agrees to unblock by October 1, 1979, all assets which were blocked because of an interest, direct or indirect, in those assets of the PRC, its nationals, or natural and juridical persons subject to its jurisdiction or control, and which remained blocked on the date of the initialing of this Agreement, March 2, 1979. The Government of the USA further agrees, in a spirit of mutual cooperation, that prior to unblocking under this paragraph, it will notify the holders of blocked assets which the records of the Government of the USA indicate are held in the name of residents of the PRC that the Government of the PRC requests that assets of nationals of the PRC to be unblocked not be transferred or withdrawn without its consent.

ARTICLE III

The Government of the PRC shall pay to the Government of the USA \$80.5 million of which \$30 million shall be paid on October 1, 1979, and the remaining \$50.5 million shall be paid in five annual installments of \$10.1 million each on the first day of October with the first installment due on October 1, 1980.

ARTICLE IV

The Government of the USA shall be exclusively responsible for the distribution of all proceeds received by it under this Agreement.

ARTICLE V

After the date of signature of this Agreement, neither government will present to the other, on its behalf or on behalf of another, any claim encompassed by this Agreement. If any such claim is presented directly by a national of one country to the government of the other, that government will refer it to the government of the national who presented the claim.

ARTICLE VI

This Agreement shall enter into force on the date of signature.

The Agreement was signed on May 11, 1979, at Beijing, in duplicate, in the English and Chinese languages, both versions being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA	FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
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s/s Juanita M. Kreps

/s/ Zhang Jingfu

DOCUMENT 11

CHINA-UNITED STATES: AGREEMENT ON TRADE RELATIONS*

[Done at Beijing (Peking), July 7, 1979]

AGREEMENT ON TRADE RELATIONS
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE PEOPLE'S REPUBLIC OF CHINA

The Government of the United States of America and the Government of the People's Republic of China;

Acting in the spirit of the Joint Communiqué on the Establishment of Diplomatic Relations between the United States of America and the People's Republic of China;

Desiring to enhance friendship between both peoples;

Wishing to develop further economic and trade relations between both countries on the basis of the principles of equality and mutual benefit as well as nondiscriminatory treatment;

Have agreed as follows:

ARTICLE I

1. The Contracting Parties undertake to adopt all appropriate measures to create the most favorable conditions for strengthening, in all aspects, economic and trade relations between the two countries so as to promote the continuous, long-term development of trade between the two countries.

2. In order to strive for a balance in their economic interests, the Contracting Parties shall make every effort to foster the mutual expansion of their reciprocal trade and to contribute, each by its own means, to attaining the harmonious development of such trade.

3. Commercial transactions will be effected on the basis of contracts between firms, companies and corporations, and trading organizations of the two countries. They will be concluded on the basis of customary international trade practice and commercial considerations such as price, quality, delivery and terms of payment.

* Reproduced from the text provided by the U.S. Department of State.

ARTICLE II

1. With a view to establishing their trade relations on a nondiscriminatory basis, the Contracting Parties shall accord each other most-favored-nation treatment with respect to products originating in or destined for the other Contracting Party, i.e., any advantage, favor, privilege, or immunity they grant to like products originating in or destined for any other country or region, in all matters regarding:

(A) Customs duties and charges of all kinds applied to the import, export, re-export or transit of products, including the rules, formalities and procedures for collection of such duties and charges;

(B) Rules, formalities and procedures concerning customs clearance, transit, warehousing and transshipment of imported and exported products;

(C) Taxes and other internal charges levied directly or indirectly on imported or exported products or services;

(D) All laws, regulations and requirements affecting all aspects of internal sale, purchase, transportation, distribution or use of imported products; and

(E) Administrative formalities for the issuance of import and export licenses.

2. In the event either Contracting Party applies quantitative restrictions to certain products originating in or exported to any third country or region, it shall afford to all like products originating in or exported to the other country treatment which is equitable to that afforded to such third country or region.

3. The Contracting Parties note, and shall take into consideration in the handling of their bilateral trade relations, that, at its current state of economic development, China is a developing country.

4. The principles of Paragraph 1 of this Article will be applied by the Contracting Parties in the same way as they are applied under similar circumstances under any multilateral trade agreement to which either Contracting Party is a party on the date of entry into force of this Agreement.

5. The Contracting Parties agree to reciprocate satisfactorily concessions with regard to trade and services, particularly tariff and non-tariff barriers to trade, during the term of this Agreement.

ARTICLE III

For the purpose of promoting economic and trade relations between their two countries, the Contracting Parties agree to:

A. Accord firms, companies and corporations, and trading organizations of the other Party treatment no less favorable than is afforded to any third country or region;

B. Promote visits by personnel, groups and delegations from economic, trade and industrial circles; encourage commercial exchanges and contacts; and support the holding of fairs, exhibitions and technical seminars in each other's country;

C. Permit and facilitate, subject to their respective laws and regulations and in accordance with physical possibilities, the stationing of representatives, or the establishment of business offices, by firms, companies and corporations, and trading organizations of the other Party in its own territory; and

D. Subject to their respective laws and regulations and physical possibilities, further support trade promotions and improve all conveniences, facilities and related services for the favorable conduct of business activities by firms, companies and corporations, and trading organizations of the two countries, including various facilities in respect of office space and residential housing, telecommunications, visa issuance, internal business travel, customs formalities for entry and re-export of personal effects, office articles and commercial samples, and observance of contracts.

ARTICLE IV

The Contracting Parties affirm that government trade offices contribute importantly to the development of their trade and economic relations. They agree to encourage and support the trade promotion activities of these offices. Each Party undertakes to provide facilities as favorable as possible for the operation of these offices in accordance with their respective physical possibilities.

ARTICLE V

1. Payments for transactions between the United States of America and the People's Republic of China shall either be effected in freely convertible currencies mutually accepted by firms, companies and corporations, and trading organizations of the two countries, or made otherwise in accordance with agreements signed by and between the two parties to the transaction. Neither Contracting Party may impose restrictions on such payments except in time of declared national emergency.

2. The Contracting Parties agree, in accordance with their respective laws, regulations and procedures, to facilitate the availability of official export credits on the most favorable terms appropriate under the circumstances for transactions in support of economic and technological projects and

products between firms, companies and corporations, and trading organizations of the two countries. Such credits will be the subject of separate arrangements by the concerned authorities of the two Contracting Parties.

3. Each Contracting Party shall provide, on the basis of most-favored-nation treatment, and subject to its respective laws and regulations, all necessary facilities for financial, currency and banking transactions by nationals, firms, companies and corporations, and trading organizations of the other Contracting Party on terms as favorable as possible. Such facilities shall include all required authorizations for international payments, remittances and transfers, and uniform application of rates of exchange.

4. Each Contracting Party will look with favor towards participation by financial institutions of the other country in appropriate aspects of banking services related to international trade and financial relations. Each Contracting Party will permit those financial institutions of the other country established in its territory to provide such services on a basis no less favorable than that accorded to financial institutions of other countries.

ARTICLE VI

1. Both Contracting Parties in their trade relations recognize the importance of effective protection of patents, trademarks and copyrights.

2. Both Contracting Parties agree that on the basis of reciprocity legal or natural persons of either Party may apply for registration of trademarks and acquire exclusive rights thereto in the territory of the other Party in accordance with its laws and regulations.

3. Both Contracting Parties agree that each Party shall seek, under its laws and with due regard to international practice, to ensure to legal or natural persons of the other Party protection of patents and trademarks equivalent to the patent and trademark protection correspondingly accorded by the other Party.

4. Both Contracting Parties shall permit and facilitate enforcement of provisions concerning protection of industrial property in contracts between firms, companies and corporations, and trading organizations of their respective countries, and shall provide means, in accordance with their respective laws, to restrict unfair competition involving unauthorized use of such rights.

5. Both Contracting Parties agree that each Party shall take appropriate measures, under its laws and regulations and with due regard to international practice, to ensure to legal or natural persons of the other Party protection of copyrights equivalent to the copyright protection correspondingly accorded by the other Party.

ARTICLE VII

1. The Contracting Parties shall exchange information on any problems that may arise from their bilateral trade, and shall promptly hold friendly consultations to seek mutually satisfactory solutions to such problems. No action shall be taken by either Contracting Party before such consultations are held.

2. However, if consultations do not result in a mutually satisfactory solution within a reasonable period of time, either Contracting Party may take such measures as it deems appropriate. In an exceptional case where a situation does not admit any delay, either Contracting Party may take preventive or remedial action provisionally, on the condition that consultation shall be effected immediately after taking such action.

3. When either Contracting Party takes measures under this Article, it shall ensure that the general objectives of this Agreement are not prejudiced.

ARTICLE VIII

1. The Contracting Parties encourage the prompt and equitable settlement of any disputes arising from or in relation to contracts between their respective firms, companies and corporations, and trading organizations, through friendly consultations, conciliation or other mutually acceptable means.

2. If such disputes cannot be settled promptly by any one of the above-mentioned means, the parties to the dispute may have recourse to arbitration for settlement in accordance with provisions specified in their contracts or other agreements to submit to arbitration. Such arbitration may be conducted by an arbitration institution in the People's Republic of China, the United States of America, or a third country. The arbitration rules of procedure of the relevant arbitration institution are applicable, and the arbitration rules of the United Nations Commission on International Trade Law recommended by the United Nations, or other international arbitration rules, may also be used where acceptable to the parties to the dispute and to the arbitration institution.

3. Each Contracting Party shall seek to ensure that arbitration awards are recognized and enforced by their competent authorities where enforcement is sought, in accordance with applicable laws and regulations.

ARTICLE IX

The provisions of this Agreement shall not limit the right of either Contracting Party to take any action for the protection of its security interests.

ARTICLE X

1. This Agreement shall come into force on the date on which the Contracting Parties have exchanged notifications that each has completed the legal procedures necessary for this purpose, and shall remain in force for three years.

2. This Agreement shall be extended for successive terms of three years if neither Contracting Party notifies the other of its intent to terminate this Agreement at least 30 days before the end of a term.

3. If either Contracting Party does not have domestic legal authority to carry out its obligations under this Agreement, either Contracting Party may suspend application of this Agreement, or, with the agreement of the other Contracting Party, any part of this Agreement. In that event, the Parties will seek, to the fullest extent practicable in accordance with domestic law, to minimize unfavorable effects on existing trade relations between the two countries.

4. The Contracting Parties agree to consult at the request of either Contracting Party to review the operation of this Agreement and other relevant aspects of the relations between the two Parties.

In witness whereof, the authorized representatives of the Contracting Parties have signed this Agreement.

Done at Beijing in two original copies this 7th day of July, 1979, in English and Chinese, both texts being equally authentic.

FOR THE UNITED STATES
OF AMERICA

FOR THE PEOPLE'S REPUBLIC
OF CHINA

Leonard Woodcock

Li Xiang

DOCUMENT 12**TAIWAN: ECONOMIC RELATIONS WITH THE UNITED STATES IN 1979****Introduction*

Taiwan's robust economic performance in 1979 underlines the continuing foreign and domestic confidence in the stability of the island. Economic indicators continue to dispute any implication that the absence or loss of official relations with its major trading partners, most recently the United States, has adversely affected the material well-being of the people of Taiwan. Taiwan's credit worthiness among international bankers at year-end 1979 ranged from "very good" to "excellent." Long-run growth strategy and short-term policies are considered by bankers to be highly effective. In fact, a year-end report by Switzerland's Bank for International Settlements — the "central banker's bank" — rated Taiwan as one of the safest investment/lending markets in Asia. There is no evidence that the severance of official ties between the United States and Taiwan has in any way interfered with commercial relations with Taiwan. On the contrary, U.S.-Taiwan bilateral trade and U.S. investment in Taiwan increased by 23% and 15% respectively in 1979.

The gross national product, which advanced 12.8% in real terms in 1978, grew about 8% in real terms in 1979 to a record \$32 billion. The target range for 1980 is 6 to 8%.

The island's current prosperity and bright prospects — buttressed by perennial budget and foreign trade surpluses — reflect earlier bold and successful policy choices. For example, in 1973 when it had become apparent that 10 years of rapid and successful growth had strained the island's infrastructure to the limit, Taiwan initiated an ambitious \$7 billion program to build nuclear power plants, develop heavy industry and remove transportation bottlenecks. This program, known as the "Ten Major Development Projects," ran headlong into the recession of 1974–75. Totally dependent on imported oil, Taiwan's domestic inflation rate soared 50% in 1974. Real growth — which had averaged 10% in the proceeding years — plunged to 0.6% in 1974 from 12% in 1973, and private investment declined 11%. The picture was similar in 1975; 3.1% real growth and a further 12% decline in private investment. But demand and momentum generated by the "Ten Major Projects" program helped cushion the shock, and this factor, buttressed by recovery of demand in export markets, helped the economy rebound to 11.8% real growth in 1976.

Many of the major projects came to fruition in 1978–79 and the remainder will come on stream in 1980–81. They include: the new Chiang

* Report sent to Congress by the Department of State in accordance with the Taiwan Relations Act of 1979 (Document 8).

Kai-shek international airport near Taipei; a north-south freeway; large-scale railway electrification; new harbors near Taichung and Suao; a steel mill, a major shipyard, a petrochemical complex; and the nuclear power program.

Foreign Investment

U.S. and other foreign investment approvals reached a record \$329 million in 1979 as compared with \$213 million in 1978.* New American investment approvals totalled \$80.4 million, most of it by 34 firms, 14 new to Taiwan. A list of those projects is included at Table I.

More than one half of aggregate U.S. investment of \$666 million** since 1952 is concentrated in the electronics industry and about one-fifth in chemicals. The picture for 1979 is as follows:

INVESTMENT BY INDUSTRY — 1979

	<i>U.S. Millions</i>
Electronics	63.2
Chemicals	4.1
Banking	3.7
Metals	2.4
Garments and foot wear	1.0
Plastics	.2
Machinery	1.8
Pulp, paper and products	.75
Services	1.60
Others	1.65
Total	80.40

U.S. firms continue not only to establish branches or subsidiaries in Taiwan, but increasingly are engaging in joint ventures. For example, coincident with the formal inauguration of the first nuclear power plant in Taiwan on November 4, 1973*** EBASCO Services, which designed the \$820

* Foreign investment generally represents less than 5% of total investment; total gross capital formation exceeded \$6.5 billion in 1978 and probably reached \$8 billion in 1979.

** This represents 30% of total foreign investment of \$2.16 billion since 1962. (Other major sources: 16.7% from Japan and 31.7% from Overseas Chinese investors.)

*** Actually, the power plant itself, north of Taipei at Chinshan, has been in use since the first unit went into operation in April 1978; the second was completed in April 1979. General Electric and Westinghouse as well as EBASCO Services were major suppliers. Two other nuclear power stations, each with two units, are under con-

million plant, signed a joint venture agreement with Taiwan's largest engineering firm (CTCI Corp. — staff of 700). The group will seek foreign and domestic construction work, particularly in Saudi Arabia and Kuwait.

Similarly, the Taiwan Power Company (45%), General Electric (45%) and Central Investment Holding Company (10%) in August 1979 agreed on a \$40 million joint venture to produce 13 large steam generators between 1981 and 1987. On the export side, Tang Eng. Co. has recently signed contracts with three American companies in Hartford, Connecticut, to buy a stainless steel plant at a cost of \$US 60,901,922. The three companies are: General Electric Co., Waterbury-Farrell division of Textron, Inc., and Produce Machinery Co.

New foreign investment regulations adopted in July 1979 provide for the establishment of a scientific industrial park offering tax and other incentives to firms which invest in high-technology industries. Other new regulations amended the statute for investment by foreign nationals to provide for simplified investment application procedures and broader investment incentives.

It should be noted that Taiwan entrepreneurs also invest abroad. Monetary authorities do not as a matter of policy encourage overseas investments by Taiwan firms, but apparently are prepared to endorse foreign investment projects aimed at securing access to raw materials or at enhancing marketing opportunities. For example, Taiwan Power Company (Taipower) is assessing an investment role in foreign coal mines, and the Tatung Company assembles TV sets from Taiwan-produced components at plants in Hong Kong, Singapore and Los Angeles. Outward investment totalled \$9.4 million in 1979, \$620,000 of it in the U.S.

Export-Import Bank (EXIM) exposure of \$2.2 billion in Taiwan — \$555 million in 1979 — is the second highest in the world. Much of the bank's exposure is in Taipower's ambitious nuclear power plants. Taipower is the bank's largest single customer.

The Overseas Private Investment Corporation (OPIC) wrote insurance totalling \$33,023,700 for three major projects in Taiwan in 1979 and has under consideration 11 additional applications filed during the year. OPIC did not authorize any finance projects in Taiwan in 1979.

In November, three additional American banks were licensed to open offices in Taipei: Seattle First National Bank, Rainier National Bank of Seattle and the First National Bank of Boston. They will open offices and begin making investments early in 1980. This will bring to 16 the number of foreign banks represented in Taiwan — 11 from the U.S. and one each from

struction by Bechtel Corp. They are scheduled for completion in 1985, with price tags of \$1.5 billion and \$2 billion, respectively. When completed the three stations will generate 30% of Taiwan's electric power. Taipower is planning six additional nuclear plants for completion by 1983 and a further six plants for completion by the year 2000.

Canada, Japan, the Philippines, Singapore and Thailand. Five European banks reportedly plan to open branch offices in Taiwan in 1980.

Foreign bank loans and syndications to Taiwan totalled \$1.7 billion in 1979. To date U.S. banks have extended or syndicated the great majority of such loans, but European banks are becoming increasingly active in this market. A list of major loans in 1979 appears in Table II.

Foreign Trade

Taiwan's commerce with more than 100 trading partners totalled about \$34 billion in 1979, up 42% from the 1978 total.

Trade with the U.S.

U.S.-Taiwan trade totalled \$9.17 billion in 1979, 23% higher than in 1978. Notably, the value of U.S. exports to Taiwan increased 37% over the 1978 total. Composition of this trade is listed in Table III.

Bilateral Trade

	1978	1979	Change
US Imports from Taiwan*	5.012	5.901	+17.7
US Exports to Taiwan	<u>2.388</u>	<u>3.271</u>	<u>+37%</u>
Total	-2.624	-2.630	

Exports of manufactured products, which account for nearly 50% of total U.S. exports to Taiwan, were led by fertilizers and other chemicals (15%), machinery and equipment (12.7%), aircraft and equipment (5.6%) and electronic parts and components (5.1%).

Although the value of exports in 1979 was 37% higher than in 1978, and despite Taiwan's special efforts to buy U.S. products, U.S. exporters face increasingly severe competition in this market. Members of the Joint Economic Committee, led by Senator Lloyd M. Bentsen, addressed the competitiveness issue in talks in Taiwan in January 1980.

Exports of U.S. farm products — nearly one-third of total U.S. exports — reached the \$1 billion mark for the first time in 1979, up from \$825 million in 1978 and only \$476 million in 1976. Taiwan continued to rank globally as the 10th largest foreign market for U.S. farmers.

Soybeans, corn, cotton and wheat were the leading agricultural export items to Taiwan in 1979, in that order, accounting for about 85 percent of such exports. Taiwan is the second largest market for U.S. soybeans in Asia, after Japan.

U.S. sales of soybeans increased to 1.2 million tons in 1979 from 671,000 tons in 1977 and the value doubled, rising from \$148 million to \$320 million. Sales of corn increased to 2.3 million tons in 1979 from 1.8 million tons in 1978. The value of corn sales increased from \$196 million in 1978 to \$300 million in 1979. The U.S. share of Taiwan's growing corn market was only 4.4% in 1970, but as a result of aggressive marketing in a receptive environment reached 57% in 1977 and 85% in 1979. Corn exports probably will level off in 1980 as a result of a sharp decline, beginning in 1979, of Japanese purchases of frozen pork from Taiwan (11,000 tons through August compared with 20,300 tons in that period in 1978). This has resulted in a surplus of hogs and corn on the island.

Cotton shipments in 1979 were nearly the same as in 1978 when 547,000 bales were exported for a value of \$141 million. Exports of wheat increased to about 700,000 tons in 1979 from 595,000 tons in 1978, and the value rose from \$78 million to more than \$100 million.

Taiwan's purchases of U.S. tobacco in 1979 soared to about 15,000 tons valued at about \$76 million — double the 1977 level. Factories in Taiwan are also using more U.S. tallow, cattle hides and furs.

Exports of fruit juices, beer, apples, pulses and canned corn to Taiwan increased in 1979. Exporters sent 6,000 tons of U.S. apples to Taiwan in 1979 — triple the 1978 level. Exports of fruit juices more than tripled in 1979. Taiwan became the leading foreign market for U.S. beer in 1979.

Taiwan will continue to grow in importance as an export market for U.S. firms. One reason lies in the recent adoption of a \$5.2 billion "Twelve New Construction Plans" program for 1979-85 to further expand the transportation and industrial infrastructure already broadened by the "Ten Major Projects" Program. Import of consumer goods will also grow in importance as the island's increasingly prosperous population of 17.3 million reaches an estimated 24 million by the year 2000.

U.S.-Taiwan trade aggregates for the decade of the 1970's look like this:

	<i>U.S. \$Millions</i>							
	1970	1971	1972	1973	1974	1975	1976	1977
Exports to US	567	865	1277	1690	2053	1833	3060	3636
Imports from US	364	408	545	954	1685	1655	1801	1966
Balance with US	+203	+457	+732	+736	+368	+178	+1259	+1672
Total Exports	1469	2047	2979	4479	5593	5304	8035	9361
Total Imports	1363	1755	2332	3744	6424	5560	7258	8511
Balance with world	+106	+292	+647	+735	-831	-256	+777	+856
(Exports and Imports F.O.B.)								

Source: Export-Import Bank of the U.S.

* (U.S. Department of Commerce Data, F.A.S. Basis. Figures in U.S. \$Billions).

Trade With Other Major Partners

Taiwan's exports to Japan, Europe and other industrialized trading partners also increased sharply in 1979 (details for 20 major trading partners are listed in Table IV):

US \$Millions —Jan-Nov 1979

	<u>1978</u>	<u>1979</u>	<u>Change</u>
Japan	1,402	2,086	+ 48.3%
Hong Kong	767	1,011	+ 32%
West Germany	514	671	+ 30.5
Australia	297	377	+ 27%
Canada	292	375	+ 28.4%
Great Britain	293	366	+ 25%
Netherlands	209	304	+ 45%

Trade with Eastern Europe

In November, trade authorities announced sweeping relaxations of restrictions on trade with the communist countries of Eastern Europe. Specifically, with effect from December 1, direct trade has been authorized with five countries — Czechoslovakia, East Germany, Hungary, Poland, and Yugoslavia — with which only indirect trade through third countries had been permitted in the past, and indirect trade is to be permitted with the USSR, Albania, Bulgaria, and Romania, with whom trade on any terms had previously been forbidden. It has been reported that communications links will be established with the five direct trade countries in order to assist interested traders.

Trade with PRC

There are indications that indirect trade between Taiwan and the PRC appear to have increased substantially in 1979. Tourists in Canton report seeing in hotel rooms refrigerators and other items labelled "Made In Taiwan," reflecting the PRC decision in early 1979 to remove import duties on, and to admit, goods made in Taiwan. Hong Kong press sources report the value of shipments of Taiwan goods to the PRC reached \$3 million in the period January-June 1979 as compared with only \$50,000 in that period in 1978. They put the value of PRC goods reaching Taiwan in 1979 — mainly traditional Chinese medicines and foods and condiments — at \$27 million.

Tourism

Tourism also increased in 1979, both to Taiwan and from Taiwan. Tourist arrivals, despite a drop in the number of U.S. visitors, increased to 741,340 in the period January-August (latest data available) as contrasted with 694,428 in the same period in 1978. In February, the authorities in Taiwan relaxed 30-year-old strictures on tourist travel. As a result, in the first six months of 1979 (latest data available) tourists and students carried abroad as expense money nearly \$520 million; foreign tourists spent \$323 million in Taiwan (it is estimated that 15,000 students from Taiwan are enrolled at universities in the United States). Statistically, the tourism picture looks like this:

FOREIGN ARRIVALS BY NATIONALITY

	<i>Jan-Aug 1978</i>	<i>Jan-Aug 1979</i>	<i>Change</i>
TOTAL	694,428	741,340	+ 6.8%
from:			
Japan	423,218	484,484	+ 14.5%
Malaysia	24,824	31,748	+ 27.9%
U.S.	100,771	72,758	-27.8%
U.K.	12,314	13,156	+ 6.8%
ROK	6,857	8,794	+ 28.2%

**OVERSEAS CHINESE ARRIVALS BY
COUNTRY OF RESIDENCE***

	<i>Jan-Aug 1978</i>	<i>Jan-Aug 1979</i>	<i>Change</i>
TOTAL	133,260	141,495	+ 6.2%
from:			
Hong Kong	103,029	103,624	N.C.
USA	7,418	8,134	+ 10%
ROK	5,692	8,367	+ 47%
Japan	3,832	7,202	+ 88%

The sharp reduction in the number of U.S. citizens visiting Taiwan probably results from the facts that: (1) the absence of U.S. military units on Taiwan has eliminated travel to Taiwan by dependents, who are customarily recorded among foreign arrivals, and (2) some tour groups are electing to visit the PRC rather than Taiwan now that China tours have become feasible.

* "Overseas Chinese" arrivals are in addition to "Foreign Arrivals" Source: Taiwan Statistics Department.

Internal Conditions

The gap between rich and poor has steadily narrowed. In terms of income distribution, Taiwan's society was at year-end 1979 one of the most egalitarian in the world. (Taiwan's population density — 1246 per square mile — is among the highest in the world. Illustrative densities elsewhere are: the US-60; the People's Republic of China-235; India-509; Japan-794; the Netherlands-976.)

The ratio of per capita income between the top 20% and the bottom 20% of the population has been reduced from over five to one in 1966 to about four to one in 1979. (The U.S. ratio is about 9:1; Mexico's is 20:1.) The average wage for Taiwan's 2 million industrial workers was \$209 monthly in 1979. The average annual household income of farmers was estimated at \$6,960.

In an economy where unemployment was less than 3% and industrial wages increased an average of 23% in 1979, increasing numbers of people enjoy modern conveniences and luxury items. For instance, in 1968 only about 18% of all households — most of them urban — had TV sets. By 1979 even in rural areas 22% of the households had color sets and 68% had black-white sets. In 1979, 87% of all households had a refrigerator and more than 71% had motorcycles. People in Taiwan also enjoy a good diet. Per capita calorie and protein intakes in 1979 are estimated at 2,800 calories and 78.9 grams of protein per day. These are among the highest in the world. Predictably, these pressures have fueled the inflation ignited by the year's oil price increases; it ran at about 12% in 1979, as contrasted with only 5.7% in 1978. Nonetheless, the year ended with most persons in Taiwan having made substantial economic gains in real terms in 1979.

APPENDICES

APPENDIX 1

DOING BUSINESS WITH CHINA

Juanita M. Kreps
Secretary of Commerce

Frank A. Weil
Assistant Secretary for
Industry and Trade



U.S. DEPARTMENT OF COMMERCE
Industry and Trade Administration

Revised March 1979

Introduction

U.S. Policy

The United States officially recognized the People's Republic of China (PRC) on January 1, 1979. The status of the U.S. Liaison Office in Beijing (Peking) and the PRC Liaison Office in Washington is to be raised to that of an embassy on March 1, 1979.

This action by the two countries was the culmination of an effort set in motion by President Nixon's trip to China in February 1972. The Shanghai Communiqué issued on February 28, 1972, signified a dramatic shift in Sino-American affairs, ending the near absence of relations with the Mainland that dated back to before the Korean War. As a result, liaison offices were opened in the respective capitals in May 1973, the National Council for U.S.-China Trade was formed, and trade between the United States and China began to expand. It is the policy of the U.S. Government to promote trade in nonstrategic goods with the PRC.

Although trade in 1978 exceeded \$1 billion, unresolved trade and commercial issues continue to hamper its growth.* Neither country enjoys most-favored-nation (MFN) tariff treatment, and China does not have access to Export-Import Bank loans and guarantees and other financial programs of the U.S. Government, except for CCC (Commodity Credit Corporation) agricultural credits. The unresolved claims and assets issue inhibits or precludes direct banking relationships, direct shipping or airline connections in flag carriers, and the exchange of trade exhibitions. It is the policy of the U.S. Government to seek resolution of these and other barriers to the full development of trade and commercial relations.

PRC Foreign Trade Policy

Its leaders view international trade as an important factor in transforming China into a modern industrial state, as well as an instrument to foster the overall political and economic goals of making China a strong unified nation capable of exercising leadership in Asia and the world. Import policy is directed at the acquisition of capital goods that embody the modern technology needed to develop China's industry. Trade also is used to overcome serious shortcomings and bottlenecks in domestic production.

* Appendix 1 lists U.S. domestic exports to China for January-November 1978, and Appendix 2 lists U.S. general imports from China for the same period.

A NOTE ON PINYIN

On January 1, 1979, China adopted officially the "pinyin" system of writing Chinese characters in the Latin alphabet. A system of romanization invented by the Chinese, pinyin has been widely used for years in China on street signs and commercial establishment signs, as well as in elementary Chinese textbooks as an aid in learning the Chinese characters. Now pinyin is to replace the familiar Wade-Giles romanization system even in China's English language publications destined for foreign distribution. Therefore, pinyin is used throughout this report, giving the Wade-Giles romanization in parentheses after the first occurrence of each pinyin expression. Some words frequently used in this report are given below in Wade-Giles and pinyin.

WADE-GILES	PINYIN
Peking	Beijing
Kwangchow/Canton	Guangzhou
Tung Fang	Dong Fang
Erh Li Kou	Erligou
Hsi Chiao	Xijiao
Kuanghua	Guanghua
Mao Tse-tung	Mao Zedong
Teng Hsiao-ping	Deng Xiaoping
Hua Kuo-feng	Hua Guofeng
Chou En-lai	Zhou Enlai

A prevailing theme in PRC foreign trade policy has been economic independence. Until recently, China has avoided long-term foreign credit, preferring to scale imports to the amount of foreign exchange available from export earnings. However, the goal to thoroughly modernize China by the year 2000 and the objectives of the Ten-Year Plan (1976-85) are so ambitious that China has found it necessary to rely on some foreign financing. Until recently the PRC had attempted to become self-sufficient through development of its own productive capacity; now it realizes that the industrialization program can not be successfully completed in the desired time period without a major infusion of foreign plant, equipment, and technology. Generally, the PRC seeks to avoid becoming too dependent on any one country as a source of trade.

Development of foreign trade and economic relations with most nations of the world is an important part of China's present policy to maximize the potential contribution of foreign trade to economic development. China now has trading relations with more than 150 countries. To date China has joined very few international economic or financial organizations, but Beijing's interest in arrangements that promote trade should increase as the country becomes more involved in international commerce.

Approaching the Market

Researching the Market

Prior to approaching the Chinese foreign trade corporations, many firms may want to assess the potential PRC market for their goods and services. This is a difficult process since the Chinese do not issue requests for global tenders and publish little about their plans that permit an accurate assessment of the market.

For the potential exporter, it is important to understand that the Five- and Ten-Year Plans set out general goals, while the annual plan provides more specific targets, production levels, and allocates resources needed to achieve plan objectives. Emphasis is placed on the supply of material and equipment from domestic resources and, while the long-standing policy of "self-reliance" has been modified, it is by no means dead.

When the requirements cannot be met from domestic resources, however, the foreign trade corporations in Beijing are commissioned to turn to foreign sources of supply. In 1978, for example, they probably spent about \$10 billion on imports. Generally, the Chinese will allocate their scarce hard currency resources to the purchase of agricultural commodities and industrial products needed for modernization, allowing little for the import of consumer goods.

Various groups in the United States attempt to survey Chinese industries to assess the potential for American goods and services. Some of these may be found as sectoral reports in the *China Business Review* published by the National Council for U.S.-China Trade. The Commerce Department also has published studies and has an ongoing effort to develop further market information.

Foreign Trade Corporations

Foreign trade is a State monopoly controlled by the Ministry of Foreign Trade. It is conducted exclusively through a network of corporations according to priorities established by the country's economic plan. The trade corporations are organized by commodities or services for which they are responsible. They have main offices in Beijing with branch offices in various industrial centers. The following is a listing of Chinese Foreign Trade Corporations (FTC),

commodities handled by each, with their street, cable and telex addresses.

China National Arts and Crafts Import and Export Corporation
82 Dong'anmen Street
Beijing, People's Republic of China
Cable: ARTCHINA BEIJING
Telex: 22165 CNART CN BEIJING

Pottery and porcelain, drawn-work and embroidered articles, ivory carvings, jade and semiprecious stone carvings, pearls and gems, jewelry, lacquer wares, cloisonne wares, Chinese paintings and calligraphy, antiques, straw, wicker, bamboo and rattan articles, furniture, artistic handicrafts, and other handicrafts for daily use.

China National Cereals, Oils and Foodstuffs Import and Export Corporation
82 Dong'anmen Street
Beijing, People's Republic of China
Cable: CEROILFOOD BEIJING
Telex: 22111 CEROF CN or 22281 CEROF CN BEIJING

Cereals, edible vegetable and animal oils and fats, vegetable and animal oils and fats for industrial use, oilseeds, seeds, oil cakes, feedstuffs, salt, edible livestock and poultry, meat and meat products, eggs and egg products, fresh fruit and fruit products, aquatic and marine products, canned goods of various kinds, sugar and sweets, wines, liquors and spirits of various kinds, dairy products, vegetables and condiments, bean flour noodles, grain products, nuts and dried vegetables (some nuts, dried fruits, and vegetables also carried by Native Produce).

China National Chemicals Import and Export Corporation
Erligou, Xijiao
Beijing, People's Republic of China
Cable: SINOCHEM BEIJING
Telex: 22243 CHEMI CN BEIJING

Organic and inorganic chemicals, chemical raw materials, rubber, rubber tires, and other rubber products, crude petroleum and petroleum and petrochemical products (except aromatics), chemical fertilizers, insecticides, fungicides, antibiotics and pharmaceuticals, medical instruments, apparatus and supplies, dyestuffs, pigments, and paints.

China National Instruments Import and Export Corporation

Erligou, Xijiao
Beijing, People's Republic of China
Cable: INSTRIMPEX BEIJING
Telex: c/o 22242 CMIEC CN

Telecommunication equipment, electronic computers, TV center equipment, radio broadcasting equipment, radio positioning and ranging equipment, electronic components, electronic instruments, nuclear instruments, electrical instruments, physical-optical instruments, electron-optical instruments, optical metrological instruments, geodesic and aerophotogrammetric surveying instruments, electron-magnetic analysis instruments, material testing machines and equipment, geophysical surveying instruments, pollution testing equipment, laboratory instruments and appliances, and industrial processing instruments.

China National Light Industrial Products Import and Export Corporation

82 Dong'anmen Street
Beijing, People's Republic of China
Cable: INDUSTRY BEIJING
Telex: 22282 LIGHT CN BEIJING

General merchandise of all kinds, paper, stationery, musical instruments, typewriters, cameras, film, radios, refrigerators, sporting goods, toys, building materials (plywood, insulation board, p.v.c. fittings and pipe, tiles, glass, sanitary ware, etc.) and electrical appliances, clocks and wristwatches, fishnets, net yarns, leather shoes, and leather products.

China National Machinery Import and Export Corporation

Erligou, Xijiao
Beijing, People's Republic of China
Cable: MACHIMPEX BEIJING
Telex: 22242 CMIEC BEIJING

Machine tools, presses, hammers, shears, forging machines, diesel engines, gasoline engines, steam turbines, boilers, industrial and institutional refrigeration and air conditioning equipment, mining machinery, metallurgical machinery, compressors and pumps, hoists, winches and cranes, transport equipment (aircraft, railroad, automotive, ships and parts thereof), power and hand tools, agricultural machinery and implements, printing machines, knitting

and other textile machines, building machinery, machinery for the chemical, rubber, plastics and other industries, ball and roller bearings, tungsten carbide, and machinery and equipment.

China National Metals and Minerals Import and Export Corporation

Erligou, Xijiao
Beijing, People's Republic of China
Cable: MINMETALS BEIJING
Telex: 22241 MIMET CN BEIJING

Steel plates, sheets and strip, steel sections, steel pipe and tube, railway materials, cast iron products, pig iron, ferroalloys, fluorspar, limestone, nonferrous metals, precious rare metals, ferrous ores, nonferrous ores, rare earths, nonmetallic minerals, refractories, coal and coke, cement, granite, marble, bricks and other construction materials, and hardware.

China National Native Produce and Animal By-Products Import and Export Corporation

82 Dong'anmen Street
Beijing, People's Republic of China
Cable: CHINATU HSU BEIJING
Telex: 22283 TUSHU CN BEIJING

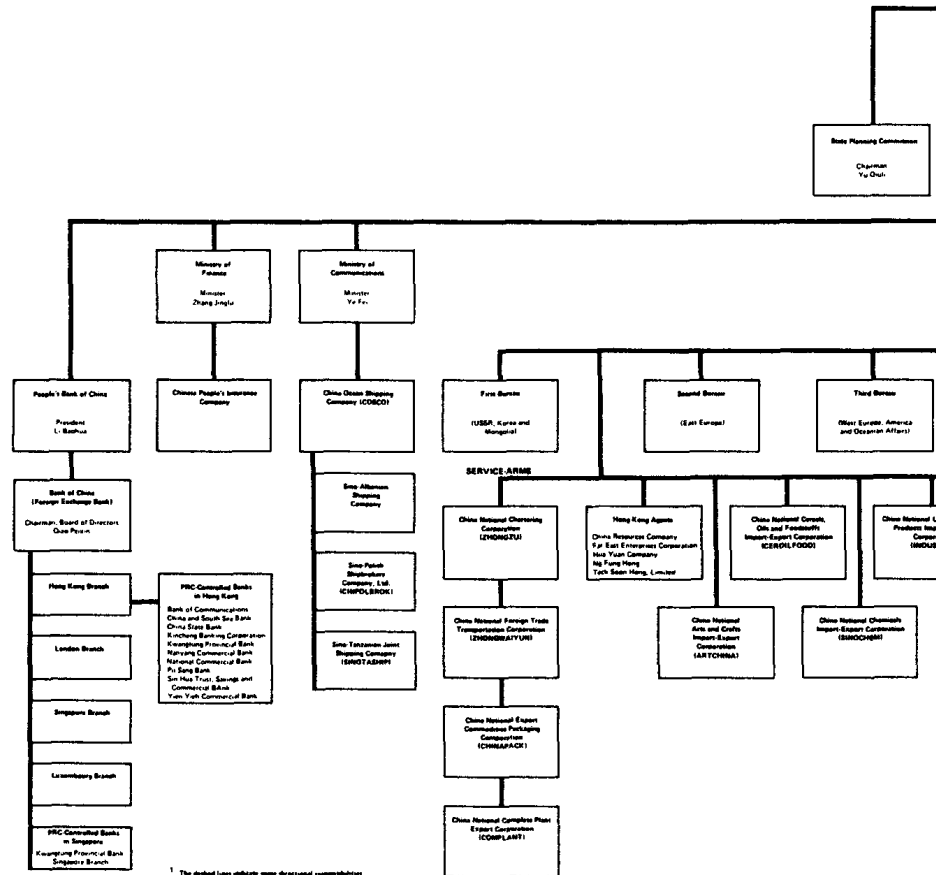
Tea, coffee, cocoa, tobacco and cigarettes, fibers (hemp, ramie, jute, sisal, flax, etc.), rosin, manioc, starches, and seeds, cotton linters and waste, timber, certain papers and forest products, waxes, spices, essential oils, aromatic chemicals, nuts, dried fruits and vegetables (see also CEROIL-FOOD), patent medicines and medicinal herbs, fireworks, nursery stock as well as other native produce, including bristles and brushes, horsetails, feathers, down and down products, feathers for decorative use, rabbit hair, goat hair, wool, cashmere, camel hair, casings, hides, leathers, fur mattresses, fur products, carpets, living animals.

China National Technical Import Corporation

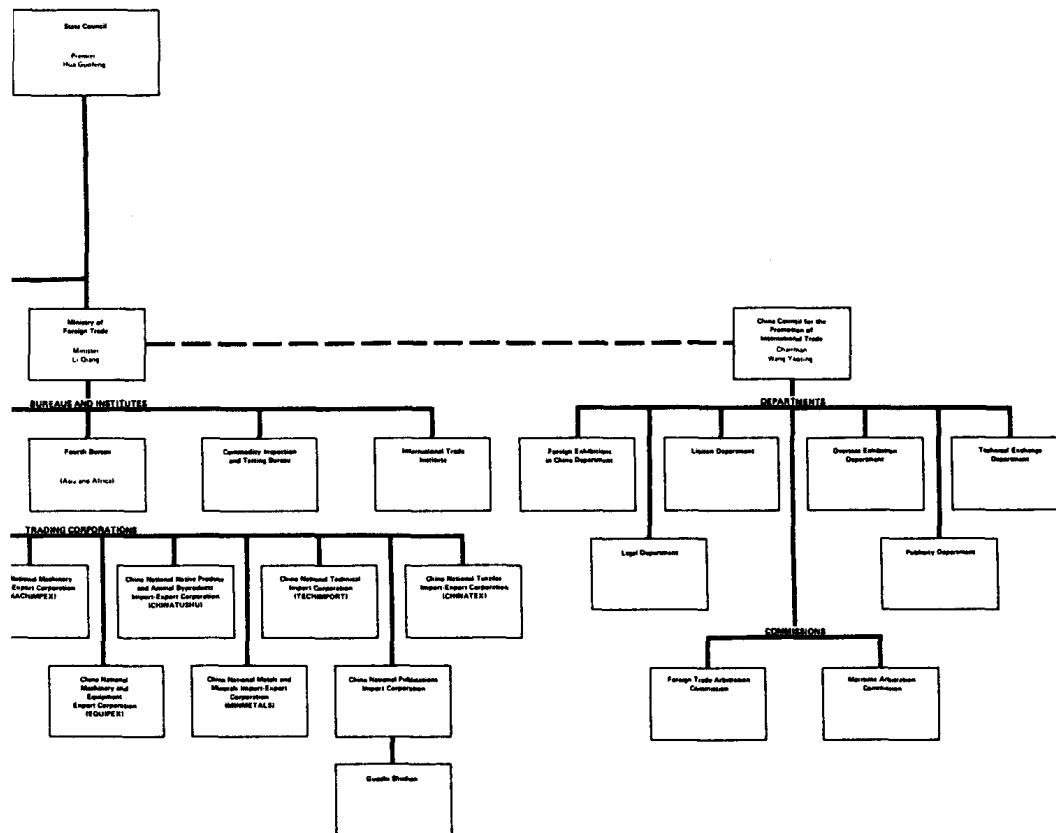
Erligou, Xijiao
Beijing, People's Republic of China
Cable: TECHIMPORT BEIJING
Telex: 22244 CNTIC CN BEIJING

Importation of complete plants and technology.

Foreign Trade Organizations



People's Republic of China¹



China National Textiles Import and Export Corporation

82 Dong'anmen Street

Beijing, People's Republic of China

Cable: CHINATEX BEIJING

Telex: 22280 CNTEX CN BEIJING

Cotton, cotton yarns, raw silk, steam flature, wool tops, rayon fibers, synthetic and manmade fibers, cotton piecegoods, woolen piecegoods, linen, garments and wearing apparel, knitted goods, cotton and woolen manufactured goods, ready-made silk articles, drawn works.

China National Complete Plant Export Corporation

An Ding Men Wai

Beijing, People's Republic of China

Cable: COMPLANT BEIJING

Exporters only of complete factories, works and production units, usually, but not exclusively, as part of an economic aid agreement.

China National Machinery and Equipment Export Corporation

12 Fu Xing Men Wai Street

Beijing, People's Republic of China

Cable: EQUIPEX BEIJING

Exporters only of machine tools, forging and pressing equipment, wood-working machinery, measuring and cutting tools, heavy-duty machinery, mining machinery, machinery for petroleum and chemical industries, general utility machinery, agricultural machinery, power-generating machinery, electric generating sets, automobiles, roller bearings, hoisting and transport equipment, building machinery, printing machinery, electric motors, electric devices and equipment, electric instruments and meters, physical instruments, optical instruments, complete equipment for hydroelectric power stations, refrigerating works, ice-making machinery, wood screw machinery, rubber-making and plastic-making machinery.

Establishing Contact

It takes time and patience to enter the China market successfully, whether exports or imports are involved and whether a large or small firm is participating in the transaction. Prior to establishing contact, for any but the simplest

purchase transactions, you should give thought to the following questions:

- (1) Am I prepared to invest considerable money initially without assurance of an early return?
- (2) Am I prepared to negotiate the first transaction for up to 1 year or longer?
- (3) Am I prepared to obligate the necessary senior technical talent that will be needed?
- (4) Am I prepared to walk away from an unpromising negotiation at any time?
- (5) Am I prepared to resist granting concessionary terms to penetrate this market?

If some of your answers to these questions are negative, you may want to rethink entering this market.

Generally, the first step in establishing commercial contact, regardless of whether exports or imports are involved, is to determine which of the above FTCs has jurisdiction over the commodities of interest to you. Then you prepare a proposal and send it to Beijing. If the Chinese are interested in your sales proposal, they may request additional information or a reworking of the proposal based on specifications they provide. In some instances, they may invite you to Beijing to discuss the matter further. If you are buying Chinese goods, you would normally hope to receive an invitation to attend the Chinese Export Commodities Fair in Guangzhou (Kwangchow or Canton). You may wish to request an invitation in the proposal. Sales of some commodities, of course, are negotiated directly by mail, without the need for direct contact. In a few cases, where the Chinese need a commodity, they may contact the American firm directly.

The form of the initial proposal is important, even though the ultimate FTC decision to purchase a commodity rests on the Plan requirements of the Chinese economy. The sales proposal should clearly define the products or product lines you wish the Chinese to focus on. Too often, especially with multidivision corporations or with conglomerates, confusion is created by sending the FTC annual reports or other brochure material describing all product lines. The proposal should be straightforward and sufficiently explicit and technically comprehensive to permit an in-depth evaluation by the Chinese of the products in question. The

balance of the material in the proposal, designed to acquaint the FTC with your corporation and other products, may be included, but should be clearly distinguishable from the commodities, technology, or service you hope to sell.

In selling to China, the best approach is to propose a technical exchange or seminar. The basic idea is to select some start-of-the-art developments concerning the manufacture or application of your product, technology, or service and to offer to bring a team of highly qualified technical people to Beijing to discuss them. During 1978, more than 80 American firms and several U.S. delegations held such seminars, as did many firms from Japan and Western Europe. In your proposal, care should be given to detailing the technological and cost advantages of your commodity, and details of design, manufacture, and application should be appended. It is also useful and courteous to invite the Chinese to the United States to see your plant, equipment, or technology in actual operation.

The FTC is interposed between you and the Chinese end-users, at least initially. For this reason, it is essential to provide the FTC with 20 copies of your proposal. These copies are forwarded to the appropriate planning agency, design institute, or manufacturing entity for review. Unless the FTC has already been commissioned to procure what you are selling, the chances of receiving an invitation to come to China hinge primarily on what the various end-users tell the trade corporation. If the product lines you wish to sell are in different FTCs, it would be best to prepare separate proposals. Firms should always include the words "United States" or "U.S.A." in their company's address. A firm whose name and location are quite well-known in the United States may be totally unfamiliar to the Chinese and cannot be readily identified with the United States.

In addition to the FTC which has jurisdiction over your commodity, there are other places in Beijing where it might be useful to send your proposal. One of these is the Technical Exchange Department of the China Council for the Promotion of International Trade (CCPIT); see CCPIT's address under Other PRC Trade-Related Entities. Also, the Chinese recently have established a number of corporations under respective ministries whose function is to operate plants and other facilities. These corporations probably play a key role in determining what technical seminars are to

be heard and what equipment is to be bought. Some of these corporations and their parent ministries are:

China Agriculture Machinery Corporation
(First Ministry of Machine Building)

China Cereals and Oils Corporation (Ministry of Agriculture and Forestry)

China Seed Corporation (Ministry of Agriculture and Forestry)

China Chemical Construction Corporation
(Ministry of Chemical Industry)

China National Chemical Fibers Corporation
(Ministry of Textiles)

China Coal Industrial Technique and Equipment Corporation (Ministry of the Coal Industry)

China National Feedstuffs Corporation
(Ministry of Commerce)

China National Geological Exploration Corporation
(State Geology Bureau)

China National Oil and Natural Gas Exploration and Development Corporation
(China Petroleum Corporation and the Ministry of Petroleum)

China Petroleum Corporation (Ministry of Petroleum)

China National Radio Equipment Corporation
(Fourth Ministry of Machine Building)

China National Underwater Cable and Construction Corporation (Ministry of Posts and Telegraphs)

China Railway Technical and Equipment Corporation (Ministry of Railways)

China Waste Materials Reclamation Corporation (possibly the Ministry of Public Health)

These corporations may be addressed to the parent ministries in Beijing. It may also be useful to send several copies of the pertinent technical information to:

The Center for Introducing Literature and Samples of New Foreign Products, CCPIT
P.O. Box 1420
Beijing, People's Republic of China

This organization has been set up to keep users of foreign products and technology abreast of the most recent developments. The

center does not engage in business negotiations, however. Copies of your proposals, or at least the covering letter also should be sent to:

Commercial Office
Embassy of the People's Republic of China
2300 Connecticut Avenue, N.W.
Washington, D.C. 20008, and

Commercial Officer
Embassy of the United States of America
17 Guanghua Lu
Beijing, People's Republic of China

Should the proposal be put in Chinese? Of course, this is the courteous thing to do and it probably will facilitate the handling of your proposal in the PRC. On the other hand, the number of adequate translation services in the United States that are familiar with the simplified characters used in China is very limited. If your proposal covers products for which the need is unclear, it may be quite wasteful to have a lengthy proposal translated although a translation is probably helpful to the Chinese. If in doubt, have the covering letter translated; this should serve to show your interest. Any proposal in Chinese should be accompanied by the English original.

In your proposal do not overstress past relationships with China. The PRC is more interested in current performance than in any past connections, either prior to 1949 or since then with Taiwan. Naturally words such as Red China or Mainland China and other offensive terms should be avoided; refer to the People's Republic of China or simply China.

If the Chinese are interested in a proposal, they can be expected to reply, even though they may not acknowledge its receipt. However, it takes considerable time—often months—for a proposal to be disseminated and assessed. There may be no reply at all, probably indicating no requirement for such commodities at the time (Appendix 3 contains a list of commodities thought to be of interest to the Chinese). Firms that are convinced that their products mesh with Chinese development priorities should keep their products and literature before the appropriate foreign trade officials. Because of mailing and distribution time lags, 8 to 12 weeks should be allowed before initiating any follow-up activities. In general, it is advisable to follow up periodically with additional material and samples, especially with regard to any product developments that would enhance the initial approach. Any additional literature or

samples should be accompanied by a covering letter that refers to the original proposal.

The FTCs alone are responsible for negotiating contracts, although this too may change. In addition to sending copies of proposals to the CCPIT and the various operating corporations under their respective ministries, it may be helpful on occasion to visit the Hong Kong agents of the FTCs. The agents can explain the current situation and usually report fully to their principals in Beijing. In some instances they are allowed to conclude trade deals.

In addition to communicating by mail with the FTCs in Beijing or by visiting their agents in Hong Kong, several other approaches may be taken. These include: Attendance at the Guangzhou (Kwangchow or Canton) Trade Fair; participation in an exhibition in or trade mission to the PRC; contacting PRC commercial/technical missions to the United States; utilizing the services of the U.S. and PRC Embassies in the capitals of the two countries; and becoming a member of, or consulting with, the National Council for U.S.-China Trade.

In general, the Chinese prefer to deal with American firms directly, but will not refuse to negotiate through agents when necessary.

For further information or advice on contacting the Chinese on commercial matters, call or write to:

U.S. Department of Commerce
Industry and Trade Administration
Office of East-West Country Affairs
PRC Affairs Division—Room 4044
Washington, DC 20230
(Telephone: 202-377-3583/4681)

or

Office of East-West Trade Development
Trade Development Assistance Division
Room 4816
Washington, D.C. 20230
(Telephone: 202-377-2835)

The U.S. and Chinese Embassies

Liaison Offices, opened in the respective capitals of both countries in 1973, become embassies on March 1, 1979. Both embassies contain economic/commercial sections and provide important points of contact for business people from both countries.

While U.S. firms should consider keeping the PRC Embassy in Washington informed of their capabilities and their desire to do business in

China, the basic approach to selling in the PRC is through the appropriate FTC in Beijing. The U.S. Embassy in Beijing will assist Americans by providing advice on the FTCs and by generally apprising U.S. business people of the economic situation and commercial opportunities in China. The Embassy has a room with copier, typewriters, and other equipment to service the business visitor. It can arrange the loan of projectors for slide or movie presentations. During 1979, it is expected that a telex connection to service business visitors will be established at the Embassy.

The National Council for U.S.-China Trade

The formation of a National Council for U.S.-China Trade was announced on March 22, 1973. The Council—a nonprofit, private organization maintaining close liaison with the U.S. Government—serves as a forum for the discussion of trade policy and issues. It also serves as a focal point for business contact and the dissemination of information on marketing in the PRC. The Council maintains a business counseling service; it also publishes the *China Business Review* bimonthly. The Council facilitates the reciprocal arrangements of trade missions and trade exhibitions in the United States and China.

To promote these activities the Council maintains a working relationship with the China Council for the Promotion of International Trade in Beijing and the PRC Embassy in Washington. Individuals and firms interested in these activities should consult either the National Council or the PRC Affairs Division within Commerce's Industry and Trade Administration. The National Council may be reached at Suite 350, 1050 17th Street, N.W., Washington, D.C. 20036 or by phone at (202) 331-0290/0294.

Other PRC Trade-Related Entities

Bank of China (BOC)
17 Xijiaomingxiang
Beijing, People's Republic of China
Cable: HOCHUNGHUO BEIJING
Cable for all branches CHUNGKUO

The BOC handles all of China's external financial dealings, finances the FTCs, and for all intents and purposes acts as the foreign branch of the People's Bank of China, China's national bank. The BOC has branches throughout China and four abroad (Hong Kong, Singapore, London and Lux-

embourg). It also maintains corresponding banking relationships with scores of foreign banks, of which 30 or so have branches in the United States.

China Council for the Promotion of International Trade (CCPIT)
4 Taipingqiao Street
Beijing, People's Republic of China
Cable: COMTRADE BEIJING

Although the CCPIT is said to be a non-governmental "public" organization, it is an important part of China's foreign trade structure. As such it works with the Ministry of Foreign Trade and the FTCs on China's external trade and serves as a liaison between China's trade enterprises and their counterparts abroad. Its responsibilities include informing foreign trade organizations of China's trade and keeping abreast of developments in foreign markets; arranging economic and trade-related exchanges, which include Chinese exhibitions abroad as well as foreign exhibitions in the PRC; and registration of trademarks. The CCPIT does make "unofficial" trade agreements with foreign organizations in its own name. Through its Foreign Trade Arbitration Commission and Maritime Arbitration Commission the CCPIT has responsibility for settlement of legal disputes related to foreign trade and maritime affairs.

China National Chartering Corporation
Erligou, Xijiao
Beijing, People's Republic of China
Cable: ZHONGZU BEIJING
Telex: 22153 TRANS CN; 22154 TRANS CN; 22265 TRANS CN

Under the direction of China National Foreign Trade Transportation Corporation, this corporation charters foreign vessels and books shipping space required for Chinese import and export cargoes. It also does similar business on behalf of principals located abroad. Canvasses cargoes for ship owners.

China National Export Commodities Packaging Corporation
2 Chang'an Street
Beijing, People's Republic of China
Cable: CHINAPACK BEIJING

It supplies packing materials for export commodities.

China National Foreign Trade Transportation Corporation
 Erligou, Xijiao
 Beijing, People's Republic of China
 Cable: ZHONGWAIYUN BEIJING
 Telex: 22153 TRANS CN; 22154 TRANS CN; 22265 TRANS CN

This corporation arranges customs clearance and delivery of all import/export cargoes by land, sea, and air, or by post. It may act as authorized agent clearing and delivering goods in transit through Chinese ports. In addition, it arranges marine and other insurance and institutes claims on behalf of cargo owners on request.

China Ocean Shipping Company
 6 Dongchang'an Street
 Beijing, People's Republic of China
 Cable: COSCO BEIJING
 Telex: 22264 CPC PK CN

The company engages in cargo and passenger services, handles clearing of foreign ships and booking of shipping space and transshipment cargo.

China National Publications Import Corporation
 P.O. Box 88
 Beijing, People's Republic of China
 Cable: PUBLIM BEIJING

China's importer of books and periodicals.
Guozi Shudian
 P.O. Box 399
 Beijing, People's Republic of China
 Cable: GUOZI BEIJING

Guozi Shudian exports China's books and periodicals and arranges subscriptions to Chinese newspapers and periodicals on behalf of foreign readers.

People's Insurance Company of China
 108 Xijiaomingziang
 P.O. Box 2149
 Beijing, People's Republic of China
 Cable: 42001 BEIJING
 Telex: 22102 PICC

This company provides international trade and marine risk underwriting at competitive rates. It has overseas agents in leading countries.

Scientific and Technical Association
 31 Ganmianhutong
 Beijing, People's Republic of China

With the CCPIT, this organization plays a

role in and may be consulted on arranging scientific and technical symposia in China. It is responsible for planning scientific research and development and plays a lead role in organizing and controlling the professional societies, such as the Society of Automation, Society of Electronics, and many others.

Some of the trade organizations have agents in Hong Kong. These agents, their addresses, and the FTCs they represent are as follows:

China Resources Company (CRC)
 Bank of China Building
 Des Voeux Road Central
 Hong Kong
 Cable: CIRECO HONG KONG

CRC represents China National Machinery Import and Export Corp., China National Chemicals Import and Export Corp., China National Metals and Minerals Import and Export Corp., and China National Textiles Import and Export Corp.

Far East Enterprises Corporation (FARENCO)
 Bank of China Bldg.
 Des Voeux Road Central
 Hong Kong

FARENCO represents the China Foreign Trade Transportation Corporation and arranges transshipment of goods to and from the PRC through Hong Kong.

Hua Yuan Company
 37-39 Connaught Road West
 Hong Kong
 Cable: HYCOMP HONG KONG

Hua Yuan represents China National Light Industrial Products Import and Export Corp., and China National Native Produce and Animal By-Products Import and Export Corporation.

Ng Fung Hong
 Bank of China Building
 Hong Kong
 Cable: NGFUNG HONG KONG

Ng Fung Hong represents China National Cereals, Oils, and Foodstuffs Import and Export Corp.

Teck Soon Hong Ltd.
 37-39 Connaught Road West
 Hong Kong
 Cable: STILLON HONG KONG

Teck Soon Hong represents China National

Native Produce and Animal By-Products Import and Export Corp., China National Light Industrial Products Import and Export Corp., and China National Textiles Import and Export Corp.

Ministries, Enterprises, and Other End-Users.

—The FTCs import commodities and technology on behalf of ministries, enterprises, and other consuming entities in the PRC. The operating corporations serving some of the ministries have already been mentioned. It would be ideal to reach all end-users, since they play a major role in deciding what commodities are to be procured within the constraints of plans and budgets. If you are invited to Beijing for discussions with the FTC, especially if you are engaged in a technical seminar or exchange, you will be aware that end-users are present during these discussions.

Another way to contact end-users in an attempt to influence their decisions is by exhibiting equipment in China where engineers and other representatives of consuming entities have an opportunity to observe and ask questions about the equipment being demonstrated. The U.S. Government will be working to remove the remaining barriers to exchanging trade exhibitions between the two countries. Some U.S. firms with subsidiaries in Canada, or Western Europe have managed to exhibit their equipment in Canadian, British, or French exhibitions in Beijing.

Useful contact with end-users may be made when they visit the United States or third countries as members of trade missions and delegations. In any event, if PRC end-users can be reasonably identified, it may be useful to communicate by letter with them, outlining the technical and economic advantages of given products. It also is possible to get information about your products to Chinese end-users by advertising in Chinese in publications about American industrial products that are published by American firms. (See Bibliography.)

The Guangzhou Trade Fair

The Chinese Export Commodities Fair in Guangzhou, sponsored by the foreign trade corporations, is held twice a year—in the Spring (April 15–May 15) and Fall (October 15–November 15). While the Fair is heavily export-oriented and only Chinese commodities are displayed, the FTCs do purchase foreign products during this event. Since its inception

in 1957, the Fair has grown steadily. In the Spring of 1974 it was moved to a new building complex in the Liu Hua district on the outskirts of Guangzhou. The new exhibition hall is near the new train station serving Hong Kong, Beijing, and Shanghai and is a 10-minute walk from the Dong Fang Hotel, which accommodates U.S. business people. Completion of the new complex indicates that the Fair, now accounting for roughly half of China's exports, will continue to play an important role in China's trade.

The Fair offers the best opportunity for U.S. importers to transact business with China, and it affords U.S. exporters some chance to approach the FTCs. It provides a unique opportunity to assess the type, availability, and price of various Chinese products. By viewing the new products exhibited at each Fair, foreign business people may obtain a convenient overview of the technological progress of the Chinese people, and the direction such progress is taking.

Only business people or firms specifically invited by an official PRC agency may attend the Fair. In the past, invitations generally were extended to firms with whom the PRC already had well-established relations or with whom it felt there was a good possibility of doing business. In recent years, however, both the number of invitations issued to and the attendance of American business people have had marked increases. At the Fall 1978 Fair, for example, about 600 American business people attended and did approximately \$140 million worth of business.

Business people who wish to attend should request an invitation from the appropriate foreign trade corporation or one of its agents, such as the China Resources Company (CRC). The commercial office of the PRC Embassy in Washington is also able to assist in securing an invitation to the Fair. Invitations are sometimes obtained by writing to the Chinese Export Commodities Fair, Guangzhou, People's Republic of China.

Invitations are usually extended to firms rather than to individuals. It is advisable to request places for as many buyers as necessary to properly conduct discussions on the range of commodities you may wish to purchase. Individuals representing a firm must show some evidence, usually in the form of a letter from the company, that they are the ones designated by the firm to attend the fair.

Reaching the Fair.—Travel from Hong Kong to Guangzhou takes about 6 hours by train. Changing trains at the border takes several hours during which time a meal is served and customs clearance is carried out. Starting in late 1978, hydrofoil connections between Hong Kong and Guangzhou began speeding up the travel significantly. Some air connections between the two cities also commenced, but it is uncertain whether they will become permanent. On arrival in Guangzhou, foreign business people are met by a representative of the China International Travel Service and taken to their hotel, which in most cases is the Dong Fang.

Conducting Business.—To be able to enter the Fair exhibition hall and view products or discuss business, it is necessary first to register at one of the liaison offices set up by Fair authorities in the three main hotels accommodating foreign visitors. Upon presentation of the letter of invitation and identification, the liaison office issues the visitor a numbered badge that constitutes a door pass and can be used as a convenient form of identification anywhere in Guangzhou. After registration the visiting business people may request the liaison office to make an appointment for them with the appropriate FTC officials. The liaison office can also arrange for business representatives to attend various cultural events and visit local factories and communes during their free time. In general, the liaison office acts as the Fair authorities' representative in providing for all the needs of foreign business visitors.

If business people wish, they can make their own appointments by directly approaching FTC officials on the floor of the exhibition hall. Each of the eight major exporting FTCs has permanently assigned quarters in the exhibition hall where its products are exhibited. Representatives of FTCs can be found at tables set up near product exhibits in their designated areas. They can be approached during business hours, which are from 8 a.m. to noon and 2 to 5 p.m. daily except Sunday. Discussion may take place at these tables or in special discussion rooms. Importers of Chinese products known to be in short supply may in some cases find it advantageous to approach relevant FTC officials promptly after the opening of the Fair. If an importer already has established relations with certain officials, writing to them prior to the Fair about products and quantities

desired may facilitate discussions at the Fair. The FTC supplies the necessary interpreters; of course, understanding is improved if the visitor speaks Mandarin Chinese.

Discussions may cover any item of interest to either side, including price, quantity, packaging, delivery schedules, and such things as meeting U.S. labeling laws, U.S. food and drug requirements, tailoring goods to U.S. specifications, and use of U.S. trademarks. At recent Fairs, some FTCs have shown increasing flexibility in meeting the specific needs of U.S. importers. Shoes, for example, have been made to U.S. importer specifications and, in at least one instance, an FTC consented to placing a U.S. firm's trademark beside its own although the Chinese still decline to place only U.S. labels or trademarks on their products.

While the Fair is principally concerned with Chinese exports, some sales and contract negotiations do take place in Guangzhou. These sales to China are mostly in commodities such as chemicals, synthetic fibers, pulp and paper, steel, and similar industrial products. FTC officials, some highly qualified technically, will form a delegation to listen to or hold extended discussions with the American exporter. Technical seminars have been presented at the Fair. In some cases, U.S. firms may be invited to go from the Fair to Beijing.

American business people attending the Fair can now obtain assistance from officers of the U.S. Government and the National Council. Commercial officers from the U.S. Embassy in Beijing and staff members of the Council maintain suites at the Dong Fang Hotel. In addition to offering advice on Fair procedures and Chinese business conditions and practices, business representatives are provided access to a number of useful reference works and office machines, including typewriters, a copying machine and a telex tape cutter. These representatives give receptions, which have been well attended by FTC officials, providing unique opportunities for U.S. business people to become better acquainted with Chinese trade officials.

Trade and Products.—The Fair has grown in recent years with an estimated 20,000 foreign businesspeople, representing the major industrial and commercial firms of about 110 countries, attending the 1978 Fall Fair. Since 1969, trade from the Fair has been steadily increasing; for the 1978 Fall Fair, it totaled

more than \$1 billion. The past several fairs have witnessed an increase in the amount of finished and semifinished goods sold by the Chinese.

Chinese products purchased at the Fair consist mainly of foodstuffs, textiles, animal by-products, metals and minerals, basic inorganic chemicals, pharmaceuticals, hospital and other medical equipment, and arts and crafts. Chinese prices are generally competitive with world market levels, but they can fluctuate sharply.

Other Fairs and Exhibitions

Each year the PRC participates in trade fairs and exhibitions in a number of foreign countries. It also hosts foreign exhibitions in China, usually in Beijing, but occasionally in Shanghai. In addition, various FTCs have been holding mini-fairs in Shanghai, Tianjin, and other centers located near producing facilities. Such fairs, covering forest products, carpets, straw products, wines and spirits, pharmaceuticals and medical instruments, feather and down, and furs are held irregularly although some of them are expected to become regular events. They are designed to complement, not replace, the semiannual Guangzhou Fair.

Contract Negotiations

Business propositions that elicit Chinese interest usually result in invitations to go to the Guangzhou Fair if the Chinese are exporting and to Beijing if China is considering importing. For special reasons, businesspeople may be invited to other Chinese cities for discussion, for plant visits or to attend a specialized product fair. Chinese FTCs also have begun to send buying and selling missions to the United States. As emphasized above, contacts with Chinese FTCs should be opened directly. Normally, however, the businessperson's ability to begin serious negotiations depends on obtaining an invitation from the FTC to come to Beijing or to visit the Fair.

Business negotiations with the Chinese are marked by efforts to obtain as much technical and commercial information about a company's product as possible. When companies have been unwilling to discuss proprietary technical information, they have found that the Chinese understand and accept a simple statement to that effect. They are usually well informed not only about the company with whom they are negotiating but about the company's competitors and market conditions as well. Competition

among Western business firms may be used by the Chinese as a lever to get a company to improve its offer.

Negotiations with the Chinese emphasize technical aspects and are extremely detailed. It is very important to include highly qualified, tactful personnel on the negotiating team both to resolve difficult technical problems and to demonstrate the company's technical competence and serious intentions. Commercial negotiations with the Chinese often include extensive discussions on relatively minor aspects of the transactions. Careful preparation is a must. Businesspeople should have all previous correspondence and expect to confront very astute bargainers.

The nature of the negotiations is frustrating for many business people. Negotiations are often recessed while the Chinese consider the company's presentation. This provides a marvelous opportunity to enjoy Chinese hospitality and tourist sites, but it can involve excessive time of valuable staff. Decisions are usually group decisions, made in coordination with a number of Chinese entities including the FTC, the relevant ministry and the end-users. It is characteristic of Chinese negotiating style to emphasize mutual understanding and the development of good long-term relationships, both corporate and personal.

The Chinese provide interpreters, and talks are conducted in English so it is not necessary to have an interpreter present. If a member of the company's delegation speaks Chinese in addition to his other abilities, however, this can speed the discussion and resolve possible difficulties in transmitting technical and commercial information. Knowledge of Chinese business practices as well as a sensitivity to Chinese customs also can be quite useful, but contracts have been successfully negotiated by American companies without relying on such expertise.

For small value transactions or for standard products, the contracts used by FTCs are basically unchanged although they differ somewhat from corporation to corporation and from commodity to commodity. All standardized contracts are short, usually two pages. They are printed in English or in English with matching Chinese. The FTCs will make revisions to these contracts. In general, they are more willing to amend their import (purchase) contract than their export (sales) contracts. It is important for businesspeople to press for inclusion of

all terms, since the Chinese have a "strict constructionist" attitude toward contracts.

Chinese sales contracts generally afford the FTCs more protection against nonperformance than do their standardized purchase contracts. Both sales and purchase contracts contain force majeure clauses, but for Chinese exports the coverage clearly specifies various natural disasters and a catch-all phrase to cover "any other causes beyond their control." Exporters to China should be aware that the standard force majeure clause would not be interpreted to include "acts of God," strikes, or government intervention.

According to the standard contracts, inspection of both Chinese sales and purchases is done in the PRC by the China Commodities Inspection Bureau (CCIB). Such inspections are characterized by their thoroughness—even counting small items that are packed in bulk. On some projects or for some equipment, the Chinese may also insist on inspection ex-factory, or at the U.S. port prior to loading.

Finally, China's purchase contracts normally include penalty clauses for late shipment while their sales contracts are silent on the subject. In some cases, the FTCs have waived payment when they recognized that the cause of the delay was beyond the control of the exporter; however, in other cases penalties for late deliveries and for late payment have been assessed.

On large, complex transactions (such as turn-key projects) standard contracts are not utilized. The FTCs strive for contract provisions similar to those on the standard contracts, but depending on their desire for the product and the degree of competition for the transaction, tend to be more flexible.

Types of Contractual Arrangements.—Changes in Chinese foreign trade policy that became evident in 1978 now encourage counter-trade and a wide variety of contractual arrangements not practiced earlier. In an effort to maximize export earnings, the Chinese now appear willing to engage in the following types of arrangements:

- (1) Accept raw materials into China for processing and reexport;
- (2) Accept components into China for assembly, further processing, and reexport;
- (3) Enter into joint ventures where the Chinese side supplies the factory shell and raw labor and the foreign partner

brings in the raw materials, if needed, the equipment, and supplies the training of the labor, technology, and supervision, if required. The foreign partner receives the product at a reduced price until his costs, including a profit, are paid off;

- (4) Enter into joint venture arrangements of various types in Hong Kong and possibly elsewhere outside of China.

The Chinese hope to induce foreign oil companies to assist them in the development of what are thought to be considerable resources of offshore petroleum. To do this, Beijing will allow the return on investment to consist of crude oil delivered over a sustained period of time. Other forms of buy-back compensation are in practice or are being discussed. Foreign firms will assist the Chinese in the development of their nonferrous metal resources in return for a share of the mined ore or concentrated product. Even equity participation with repatriation of profits seems acceptable although the Chinese are apt to require a majority share in the venture.

The PRC will enter into licensing arrangements, technical assistance agreements, co-production projects, and consulting arrangements, including management consultancies. The PRC will barter and switch trade, too, if it is in their interest, but these types of transactions seem to be less significant.

As the Chinese move further into the modernization of their economy, they may find still other, flexible types of arrangements conducive to increased earnings of exchange. It behooves an exporter to visit Beijing with a number of such options in mind.

Arbitration

Chinese practice, domestic as well as foreign, is to avoid formal arbitration proceedings as a way to resolve contract disputes. Even when the contract contains an arbitration clause and when a dispute has been unresolved for some time, FTCs generally strive to settle the dispute through "friendly discussion." Indeed, in many contracts, "friendly discussions" or "friendly negotiations" are cited as the primary vehicle for dispute resolutions.

The FTCs will likely suggest that if arbitration is necessary, it should be submitted to the Arbitration Committee of the China Council for the Promotion of International Trade in

Beijing, under the Arbitration Committee's rules. However, in recent years, FTCs have increasingly accepted Sweden, Switzerland or other third countries as sites for arbitration.

The most important fact, however, is the degree to which FTCs go to avoid any arbitration—even in Beijing under Chinese rules. The very few cases that have been arbitrated were reportedly conducted very fairly. In the Chinese view, such disputes should be resolved by the two parties if they have a good long-term relationship. Often the Chinese methods of contract resolution are indirect and take the form of better terms on future contracts. It is preferable to explore all avenues for resolving disputes before seeking recourse in arbitration.

Currency

The currency of China is called Renminbi (RMB) or people's currency. Basic units:

Yuan (Y) = 100 fen (cents)
jiao = 10 fen

Notes are issued in denominations of Y10, Y5, Y2, and Y1; and 50, 20, and 10 fen. Coins are issued in denominations of 5, 2 and 1 fen.

The RMB is an inconvertible currency. Bank deposits can be maintained at the Bank of China, but usually RMB is bought and sold as needed for commercial and travel purposes.

The exchange value of the RMB is determined by the Bank of China and changes periodically—generally in response to international monetary conditions. The Bank of China posts bid and offer rates for the RMB against major Western currencies. The offering price of the RMB has risen recently from 59.01 U.S. cents on January 4, 1978, to 63.56 cents on December 30, 1978. During the year, it fluctuated between 57.6 and 63.6 cents.

Since August 1975, the Bank of China has permitted businesspeople with RMB denominated contracts to purchase RMB forward. However, the relatively high cost of forward RMB (30 percent for a 6-month contract), the availability of dollar denominated contracts, and the stability of the RMB-U.S. dollar exchange rate have combined to minimize businesspeople's interest in such transactions.

Payments

Most transactions in the China trade call for payment by irrevocable letter of credit (L/C) against presentation of sight draft and shipping documents. In some cases American im-

porters have been offered contracts with payment in sight draft documents against payment (D/P) terms. Letters of credit are negotiated on the Chinese side by the Bank of China (BOC), headquartered in Beijing, with domestic branches in most ports of China. Four foreign branches of the BOC are located in Hong Kong, Singapore, London, and Luxembourg. In negotiating letter of credit transactions, the BOC utilizes an extensive network of correspondent banks established throughout the world in areas where China trades. The Bank of China has not established full correspondent bank relationships with any U.S. bank although it will accept traveler's checks, traveler's letters of credit and remittance payments drawn on certain American banks having a limited correspondent relationship. To facilitate trade finance, the BOC has made arrangements with the branches of a number of foreign correspondent banks for negotiating commercial letters of credit. With diplomatic recognition, the possibility of resolving the barriers to full U.S. correspondent banking relations seems much improved.

The Bank of China has an excellent reputation both for its efficiency in handling the technical details of financial transactions and for paying promptly and in full. In general, Chinese financial practices are not greatly different than those in the West, but they do stringently implement some contract and L/C provisions to their own advantage. For example, when China is the seller, the standard form contract usually stresses that the buyer is to open the L/C promptly and may say little about the shipping and other documents that China is to present to obtain payment. When the PRC is purchasing, the documentation required by the BOC before it will make payment is spelled out in detail. Moreover, in many PRC purchase contracts, payment is to be made only after the shipping documents are received by the branch of the BOC that opened the L/C. This will increase the amount of time between the shipping date and the receipt of payment by the number of days it takes the documents to reach China. In addition, there will be a certain period during which the seller is without goods, documents, or payment. The PRC also does not follow the accepted international practice of having its letter of credit confirmed with a bank in the seller's country. Against these examples of somewhat unusual financial practices, however, one must set the Bank of China's well-earned reputation for financial integrity.

Since the early 1970's RMB has been used to denominate many foreign trade contracts—especially for Chinese exports. FTCs generally prefer to use RMB to denominate contracts because this minimizes their exposure to the fluctuation of western currency values. However, the question of the denominating currency is open to negotiation between the parties. FTCs readily accept foreign currency denomination when China is importing. On large turnkey projects, some preference is now being shown to financing in dollars owing to the depressed state of the dollar worldwide.

Shipping and Insurance

China prefers to buy goods on an f.o.b. basis, handling all freight charges and insurance. It prefers to sell goods on a c.i.f. or c.&f. basis, sometimes having the foreign importer handle their own insurance. In this way, the PRC preserves foreign exchange, retains the insurance business, and maintains greater freedom of action in handling cargoes.

A noticeable change in the last few years has been the switch in China from selling on a purely c.i.f. basis to allowing foreign importers to handle their own insurance. In China, insurance is managed by the People's Insurance Company of China (PICC)—which underwrites insurance not only on transport of exports and imports, but also on such things as ocean-going ships and aviation, the property of foreign embassies in China, fire, and motor cars, among other things. In insuring foreign trade, the Chinese state, "The People's Insurance Company of China holds that transport insurance on imports and exports should be arranged by the cargo owners, so China's imports are generally insured with the People's Insurance Company of China whereas insurance on China's exports is generally arranged by the foreign importers. However, the People's Insurance Company of China will also underwrite exports from China if foreign importers so require."

In the FTC's sales confirmation contracts, therefore, the U.S. importer will now note that insurance is simply "To be effected by the Buyers-Sellers" with the Sellers being x'd out. A typical clause used to read: "Insurance: to be effected by Sellers covering all risks and war risk as per The Ocean Marine Cargo clauses of the People's Insurance Company of China, for 110 percent of the invoice value."

In the case of China's imports, a typical clause reads: "Insurance: to be covered by the Buyers after shipment." It should be noted that "after shipment" generally means after the goods are "stowed." In other words, in buying f.o.b. the Chinese buy f.o.b. "stowed" to assure that no title problems arise during the actual loading of the goods. Whether the goods are purchased f.a.s. or f.o.b. stowed should be clearly understood.

The rapid growth of China's trade has imposed heavy requirements on China's fleet and port facilities. Delays due to loading and unloading have been common although the difficulties have eased as China's maritime facilities have been modernized. The problem of timely delivery has been particularly acute for U.S. firms partly because U.S.-China trade has been so recently resumed and partly because of the lack of regular shipping schedules. This problem seems to be moderating as experience is gained and as more ships have begun to arrive on a more regular basis. A hopeful sign for the future is that China has begun to introduce containerization in a few of its ports. Containers used in U.S.-China trade will for the most part have to be transshipped in Hong Kong or Japan, but it should make the problem of combining many smaller shipments more manageable. Also, FTCs have shown some willingness to ship U.S.-bound commodities to Hong Kong. This allows the U.S. firm to obtain control over shipping at that point.

U.S. Regulations Governing Trade with the PRC

Imports

With the exception of certain embargoed furs (ermine, fox, kolinsky, marten, mink, muskrat, and weasel furs and skins, dressed or undressed), goods may be imported into the United States from the People's Republic of China subject to the same general rules that apply to imports from other countries (i.e., proper labeling, food and drug regulations). Goods imported from the PRC, however, are dutiable at rates listed in Column II of the Tariff Schedules of the United States. These rates are generally higher than those on goods from countries with which the United States has a reciprocal most-favored-nation (MFN) tariff agreement (Column I rates).

Information regarding the duties applicable to specific goods may be obtained by sending an adequately detailed description of the goods in

question to the U.S. Bureau of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

Importers should be aware of the regulations of the Department of Agriculture, Food and Drug Administration, and other agencies of the United States applicable to imports from all destinations.

Exports

U.S. exports to China and other Communist destinations are subject to controls provided for by the Export Administration Act of 1969, as amended. One purpose of this legislation is to authorize controls over the export of goods and technology that would contribute to the military potential of these countries to the jeopardy of U.S. national security. The legislation also declares it to be the policy of the United States to encourage trade in nonsensitive items with all nations, including China, with whom the United States has diplomatic or trading relations.

For detailed information on licensing requirements U.S. exporters should consult the Export Administration Regulations and supplementary Export Administration Bulletins at any U.S. Department of Commerce district office in 43 major U.S. cities. Included in the Regulations is the Commodity Control List (CCL); this is the key to determining whether a specific shipment may be exported under an established general license authorization, or whether a validated license is needed. A validated license is required for those commodity groupings designated by a "Y," the country category for China and most countries of Eastern Europe, including the U.S.S.R.

Once it has been determined that a validated export license is required for a specific export, an application for the license should be submitted to the Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230. Application forms can be obtained free of charge from any U.S. Department of Commerce district office.

U.S. firms are encouraged to contact the Office of Export Administration for information on export licensing, including pending transactions. Telephone inquiries may be directed to the Exporter Services: (202) 377-4811. While no official determination on licensing can be made before formal application is filed, the Office of Export Administration can often informally indicate the prospects for issuing a license.

Outside of domestic short supply and foreign policy considerations, the principal criterion in reviewing license applications is whether the technical data or commodity is designed for, intended for, or could be applied to a significant military use. Availability of comparable foreign-made equipment is also taken into account. The cases most difficult to assess from the standpoint of strategic implications are subject to review by other interested U.S. Government agencies. Export applications for certain commodities must finally be submitted for approval to the Coordinating Committee for East-West Trade Policy (COCOM), a group of delegates from Japan and the NATO countries, except for Iceland.

Financial Restrictions and Assistance

The provisions of the Johnson Debt Default Act that prohibit all private U.S. individuals, partnerships, corporations or associations from certain types of financial transactions with any foreign government or agency in default in the payments of its obligations to the United States Government may apply to the PRC.

On May 9, 1967, an advisory opinion by the Attorney General clarified the application of the Johnson Act to private financing of exports to those countries affected by the Act. The opinion stated that the Johnson Act does not prohibit export financing by U.S. firms or banking institutions if the terms of such transactions are based on bona fide business considerations and do not involve a public distribution of securities.

Prior to this opinion, there was uncertainty whether certain financial transactions connected with exports, such as lines of credit, barter transactions, and deferred payments, were proscribed by the Act. The opinion makes it clear that the Johnson Act is not intended to restrict such credit arrangements so long as they are comparable with those commonly given for export of the same commodities to other countries.

PRC Tariffs

China has a customs administration and a published schedule of tariffs embodying most-favored-nation and ordinary (higher) rates. However, for purposes of U.S. exporters, import licensing, customs formalities and tariffs do not exist as processes separate from the conclusion of contracts and need not concern the potential exporter. Foreign visitors to China are assessed duties on goods brought in for personal use in excess of specified nominal duty-free amounts (see Section on Personal and Prohibited Items).

Trademarks, Inventions, and Copyrights

China is not a party to any multilateral or bilateral treaty with the United States relative to the protection of patents, trademarks or copyrights.

Trademarks

"Measures for the Control of Trade Marks," issued by the PRC on April 10, 1963, and supplementary "Enforcement Regulations" issued April 25, 1963, govern trademark protection in that country. Foreign firms must file all trademark applications through the China Council for the Promotion of International Trade (CCPIT) in Beijing.

Registration of a trademark is granted to the first applicant. Marks registered by local enterprises have no fixed duration; they are valid until withdrawn by the registrant. Marks registered by foreign parties are valid for periods of 10 years and renewable for further 10-year periods. The owner of a registered trademark acquires the exclusive right to its use in the PRC. Registered foreign-owned trademarks may be assigned to other foreigners provided the latter meet the same requirements, noted below, as the original applicant.

A foreigner may apply for a trademark registration only if (1) a reciprocal agreement on registration of trademarks exists between the applicant's country and the PRC and (2) the applicant's mark is already registered by them in their home country. The CCPIT informed the United States Liaison Office in Peking and The National Council for U.S.-China Trade in Washington, D.C. early in 1978 that it would permit trademark registrations by U.S. nationals. U.S. nationals may now apply for and receive registrations, as of January 1, 1978. The Regulations' requirement (Article 12) of reciprocity between the PRC and the country of nationality of the applicant is considered by the PRC to be met by the United States since PRC foreign trading corporations already are permitted to apply for and register trademarks in this country.

U.S. firms desiring to file applications or to correspond with the PRC on trademark matters should write to: Trademark Registration Agency, China Council for the Promotion of International Trade, Beijing, People's Republic of China. In trademarks matters, the CCPIT acts as the foreign firm's agent with the Cen-

tral Administrative Bureau for Industry and Commerce (CABIC), which, according to the 1963 Regulations, is responsible for administering the PRC Trademark Regulations. The CABIC still performs this function. When applying for registrations, American firms must provide to the CCPIT the following documentation:

- (1) A separate application, in duplicate, for each trademark the firm wishes to register.
- (2) a power of attorney, in duplicate, for each trademark. (This document empowers the CCPIT to act on behalf of the foreign firm to register the trademark with the CABIC.)
- (3) a certificate of nationality (no prescribed form), which should show that the corporation is organized under U.S. law.
- (4) 12 prints of the trademark for each application. The meaning and derivation of the trademark word must be clearly explained. The Regulations state that the original copy of the power of attorney and the certificate of nationality must be "LEGALIZED" (i.e., notarized) by a Chinese Embassy. According to CCPIT officials, the PRC Embassy in Washington is empowered to do this.

The furnishing of evidence that the foreign-origin trademark was registered in its own country also is no longer required for the United States since it does not require Chinese corporations to provide such certification. Also according to the CCPIT, U.S. trademarks applied for and registered in the PRC may include English words. Foreign trademarks registered there are not limited to Chinese and may use any language.

If two or more enterprises apply for identical or similar trademarks, registration is accorded to the first application. The validity of the trademark registration begins from the date of approval of CABIC and is effective for 10 years. An application for renewal can be filed soon before expiration for 10 years. An application for renewal can be filed soon before expiration, for another 10-year period, and this can be followed by re-application for a further 10 years.

In some cases, subsidiaries of U.S. firms in countries with bilateral trademark agreements

with China may have already applied for trademark registrations in the PRC. American firms that have already registered trademarks through a foreign subsidiary located in a country that does have a bilateral agreement with China may, if they wish, use the assignment procedure in the Chinese Regulations to assign the trademark from the subsidiary back to the parent firm headquartered in the United States.

Under the PRC Regulations, the "owner" (i.e., holder) of the registration enjoys an exclusive right to its use. If the trademark is registered in the name of a subsidiary, only that subsidiary "owns" the right to use it, unless, under the above-mentioned assignment procedure, the subsidiary assigns the trademark to the parent corporation.

Currently, Canada, the United Kingdom, Sweden, Switzerland, Denmark, Finland, Italy, Belgium-Luxembourg, Netherlands, West Germany, New Zealand, Australia, East Germany, Norway, Czechoslovakia, Hungary, Greece, and France have reciprocal trademark registration agreements with the PRC.

Other salient features of the PRC's "Trade Marks Measures and Rules" follow. Not registrable are words or markings similar to China's national flag or other official emblems or medals, similar to national flags or emblems of other countries, similar to marking of the Red Cross or Red Crescent and those "which have an ill effect politically." There are no opposition provisions, nor time limit for governmental processing of applications. A trademark registration may be cancelled where the quality of the product does not meet governmental requirements, where it is altered without governmental authority, where a registration has not been used for 1 full year and no permission for such non-use has been granted, and where a third party applies for cancellation and, after examination of the reasons for this request by the Government, it approves the cancellation. For trademark registration purposes, there are 78 classes of goods. An application for a trademark for a medical product must be accompanied by a certificate approving the product's manufacture issued by the Health Department.

Inventions

The PRC has no patent law. Procedures governing recognition of inventions and technology for use and compensation are embodied in the "Regulations on Awards for Inventions" and "Regulations on Awards for Technical Improvements," approved October 23, 1963, by the PRC

State Council. These regulations replaced earlier Rules of 1950 and 1954 that had provided for certain patent rights. The new "Regulations" establish a system under which a party may apply to the state for official recognition of an invention or technical improvement. Should the state find the invention useful, the party is granted a registered certificate and given cash awards, and perhaps other bonuses based on the invention's use and value to the state. Technical improvements, if adopted, also qualify for cash awards and "commendation" based on their use. The state retains ownership of all such inventions and technology. Foreigners may apply and qualify for the above certificates and awards for their inventions and technology. There is no indication in the "Regulations" whether payments to foreigners are remittable. The PRC reserves the right to sell to foreigners, through its Ministry of Foreign Trade, those inventions that are authorized for sale by the State Scientific Commission.

Although there is no patent protection per se available to foreign firms in China, the Chinese have shown some willingness, on a case-by-case basis, to give contractual assurances to limit the use of the seller's technology within China and to prohibit the reexport of the technology to third countries.

Copyrights

The PRC has not joined the Universal Copyright Convention or Berne Copyright Convention, or concluded any bilateral copyright protection agreement with the United States. So far as is known, U.S. authors have no copyright protection available in the PRC for their works first published outside that country. Thus, U.S.-authored books, plays, music and other literary and artistic works presumably may be freely copied, translated and reproduced in the PRC without authorization from or compensation to the U.S. copyright owner. For further information on the PRC's laws on the above subjects, contact the Foreign Business Practices Division, Office of International Finance and Investment, U.S. Department of Commerce, Washington, D.C. 20230.

Going to the PRC

Travel

The PRC may be reached by the following international air service: Japan Air Lines, Pakistan International, Ethiopian, and Iran

Air, each twice weekly to Beijing and Swiss Air, Aeroflot, Tarom, and Air France, once a week; Swiss Air, Pakistan International, and Japan Air Lines, once a week to Shanghai. The Chinese airline, CACC, serves Tokyo, Moscow, Paris, Tehran, Karachi, and Bucharest. Regular CACC flights from Hong Kong to Guangzhou (Canton) began during the Fall 1978 Fair, thus ending the necessity of traveling by train to reach the Fair. In addition, in November 1978 hovercraft service from Hong Kong to Guangzhou was initiated.

Visas

Visa applications may be made through the PRC Embassy in Washington, D.C. (normally allow 3 days for receipt) or through the China Travel Service (CTS) in Hong Kong or Kowloon (normally allow 4 days for receipt). Two copies of the visa form and four passport-sized photos are required.

To obtain a visa for a business visit, an invitation from a FTC or other government entity is usually required. Persons who have applied for visas and have not yet received them prior to arrival in Hong Kong should produce evidence that their visit has the concurrence of an official organization in China. Without such evidence, an invitation from the appropriate Chinese authorities must be negotiated, a process that could take considerable time.

Health

For American travelers an International Vaccination Certificate bearing current smallpox and cholera entries is necessary; however, if a traveler is coming from areas where other diseases are endemic, appropriate inoculations may be required.

Currency Regulations

The China Travel Service in Hong Kong or the inbound airline provides forms for declaring personal effects such as calculators, watches, jewelry and other items of value, in addition to the amounts of foreign currency (including traveler's checks) taken into China. This declaration is necessary for the exchange of traveler's checks or cash into Chinese currency.

Foreign currency (including American dollars and traveler's checks) may be changed by the People's Bank of China located in the customs building at the border, in hotels, or on

the Hong Kong-to-Guangzhou train. Receipts for these transactions must be kept and turned in upon departure.

Personal and Prohibited Items

Personal items essential to the visitor during the trip and in reasonable quantity may be brought into China. Small amounts of medicines, up to four bottles of foreign liquor, and up to 600 cigarettes may be brought in for personal consumption. Visitors may also receive medicines, liquor, or cigarettes through the mail, but the total value each time should not exceed 50 RMB; for visitors from Hong Kong and Macao the amount should not exceed 20 RMB.

Visitors may bring in a typewriter, a tape recorder, a film projector, a copying machine, and similar items necessary for conducting business in China. Such items will be exempt from customs duties if taken out of China on departure.

Certain items are prohibited entry into China including Chinese national currency, lottery or raffle tickets, and any books, journals, films, and tapes, which would be harmful to or cast aspersion on Chinese politics, culture and morals. Such items are subject to confiscation before entry.

Visiting in the PRC

Travel Facilities

Domestic air service consists of regular CACC air flights within the PRC. Trains are comfortable and efficient, although long distances may be involved. It takes 24 hours from Guangzhou to Shanghai, and 36 hours from Guangzhou to Beijing. Within the cities, taxis are available. Fare is usually 60 fen per kilometer but can vary. There is a minimum charge for 2 kilometers. Since it is impossible to hail a taxi from the street, it is advisable to keep one's taxi for short shopping trips, or arrange with the hotel to be met by one after meetings. In Guangzhou and Beijing, restaurants will call taxis for their patrons.

Accommodations

Reservations can be made through Luxingshe (China International Travel Service), but frequently the host organization in the PRC selects one's hotel. Hotels are the Xin Chiao

and the Beijing Hotel in Beijing; the Peace Hotel, Qing Chiang, and Shanghai Mansions in Shanghai; and the Dong Fang Hotel in Guangzhou. Most offer rooms with bath or showers.

Hotels in Beijing cost approximately 50 Renminbi per day, and those outside Beijing charge 20-25 Renminbi daily.

Restaurants

All hotels for foreigners offer both Western and Chinese food. There are many fine restaurants in Beijing including: The Large Beijing Duck, the Small Beijing Duck, the Capital, the Minorities, and a Mongolian restaurant in the Bei Hai Park. (See Appendix 4.) In Guangzhou, there are the North Garden (Pei Yuan), South Garden (Nan Yuan), Riverside (Pang Qi), Moslem (Hui Min), and Floating Restaurant. When taking a party to a restaurant, some meals may need to be ordered 12 to 24 hours in advance to allow for proper preparation. Hotels and Luxingshe can recommend good restaurants.

Sightseeing and Entertainment

Inquiries may be made of the host organization, the sponsoring trade corporation, or Luxingshe concerning visits to places of historical interest. Some of the more popular are:

Beijing.—The Forbidden City, Temple of Heaven, the Summer Palace, the Valley of the Ming Tombs and the Great Wall.

Guangzhou.—Cultural Park, Island of Sha Mien, Cung Hua Hot Springs, and Martyrs Memorial Park.

There are frequent performances of the Chinese national opera, ballets, and theatre groups as well as sporting demonstrations. In addition, trips to nearby communes and factories can be arranged. Cars with drivers and guides may be hired through Luxingshe.

Generally, the initiative for entertainment should be left to the Chinese officials. Business visitors normally find it difficult to reciprocate. However, when one is entertained at a banquet, it is acceptable and often desirable to host a "return" banquet before departing for home. Normally the Chinese will provide assistance in arranging for the return banquet.

Social Customs

In China, the family name is always mentioned first. Thus, Wang Fuming should be addressed as Mr. Wang.

Normally a visitor will be invited to dinner at a restaurant during his stay, most often by the organization that is sponsoring his visit. Dinner usually begins about 6:30 or 7 p.m. The guest should arrive on time or a little early. The host normally toasts his guest at an early stage in the meal with the guest reciprocating after a short interval. The usual procedure is to leave shortly after the meal is finished. The guest makes the first move to depart.

Tippling is forbidden. However, it is appropriate to thank the hotel staff and other service people for their efforts on your behalf. Generally, gifts should be of nominal value and presented to the host group; individual gifts are not necessary although little mementos of the occasion may be appreciated.

It is customary to present business cards, and it is helpful if one side is printed in Chinese. Presentation of cards may not be reciprocated. Cards may easily be printed in Chinese in Hong Kong.

Visitors should conduct themselves with restraint and refrain from loud boisterous actions.

Photography

Generally, photographs are allowed although the Chinese may exhibit sensitivity to shots of airports, bridges, ports and the like or anything of military significance. If there is doubt as to the suitability of the subject, consult your tourist guide or a Chinese official before taking the picture. The Chinese generally allow undeveloped film to be taken out of the PRC, but reserve the right to make exceptions, and occasionally do.

Only certain brands of film can be processed in the PRC: Kodacolor (negative), Agfa Color and Sakura both positive and negative, Fuji Color only negative and Ektachrome only positive.

Dress

It is cold in Beijing from December to March and visitors are advised to dress warmly. Since offices are not heated to levels most Americans are accustomed to, sweaters and even "long

johns" may provide real comfort. In the summer in North China and during the greater part of the year in the South, tropical or light-weight clothing may be worn. Visitors to the Guangzhou Fair dress informally in open-necked sport shirts and light-weight trousers. Women will probably feel most comfortable wearing pantsuits or slacks. A lightweight pull-over may be useful in the evening. It is also advisable to take cool, comfortable footwear, a lightweight hat, and mosquito repellent.

Climate

In North China the temperature ranges from 5°F in January to 104° in July and August. Exceedingly dry and dusty for most of the year, Beijing becomes rather humid during the rainy season of July and August. South China is subtropical and fairly hot until the end of October. The climate around Shanghai in East China is very similar to South China with much higher rainfall than Beijing. Spring and autumn are the best times to visit China, from the point of view of temperature. Dust storms can be expected in north China during April and May.

Language

Chinese (also called Mandarin, Guo Yu, and Pu Tung Hua—common speech) is the national language, although several other dialects are frequently used, especially Cantonese in the South. The written language is uniform. Business visitors will find that the people with whom they negotiate either speak English or will have interpreters available. Luxingshe can advise business visitors on reliable translation services.

Time

All of China as well as Hong Kong is on Beijing time, 12 hours ahead of EDT.

Public Holidays

Official public holidays are Jan. 1—New Year, May 1—Labor Day, Oct. 1, 2—National Days. The 3-day Spring Festival (Chinese New Year) occurs in January or February, varying from year to year.

Hours of Business

Government offices and corporations are open 8 a.m. to noon and 2 to 6 p.m. Monday

through Saturday (with minor variations during the cold and hot seasons). Sunday is treated as a holiday. Appointments are rarely made before 9 a.m., and it is not advisable to seek a Friday afternoon appointment. The Chinese negotiate both in the morning and the afternoon. Business discussions tend to last longer than in the West.

Shops are open from 9 a.m. to 7 p.m. every day, including Sunday. "Friendship Stores," for foreigners only, are located in major cities and carry a wide variety of Chinese goods, especially arts and crafts.

The U.S. Embassy is open from 8:30 a.m. to 5:30 p.m. Monday through Friday. A security officer is on duty 24 hours a day and may be contacted in an emergency. (See Appendix 3 for telephone number.)

Weights and Measures

Most of the PRC's foreign trade is conducted in the metric system but domestic Chinese weights and measures should be understood:

- 1 jin (catty) = 1.102 pounds (or .5 kilograms)
- 1 dan (picul) = 0.0492 tons
- 1 mu = 0.1647 acres

The domestic Chinese measuring system is limited to agricultural accounting and shops dealing in agricultural produce.

Electricity

Both single phase, 220V AC, 50 cycle and 3-phase 380V AC, 50 cycle power are in use. Plugs are normally 2 or 3 pin flat (5 amp), but in hotel rooms there is usually one connection for a 2-pin round continental-type plug. The bathrooms in the Beijing Hotel have 110V outlets.

Communication Facilities

Telephone, telex and cable can be used for communicating with China's foreign trade corporations and with visitors to China. Telex and cable facilities at the Guangzhou Trade Fair may involve considerable delays due to the large number of businesspeople at the fair. Telephone services to Hong Kong have been excellent since the installation of a new coaxial cable. International telecommunications facilities in Beijing are easier to use because fewer foreign businessvisitors are trying to use them.

Telephone charges for a 3-minute call to China are \$12 plus tax (early 1979). Telex facilities cost \$3 per minute and there is a 3-minute minimum usage. Cable charges are 34 cents per word for the full rate and 17 cents per word for the night rate. (Charges from China to the United States appear to be similar).

Head offices of foreign trade corporations have both cable and telex facilities. Branch offices can be reached by cable. International cable credit cards are accepted.

Visitors to China can utilize public telex facilities in Beijing and Guangzhou but must punch their own tape. However, there is no provision for two-way telex service unless the receiving party is able to send a telex back immediately upon receipt of the incoming message before the direct circuit is closed.

The telephone system in Beijing and other cities is automatic. Domestic telecommunications charges are relatively inexpensive. In some cases, a domestic cable to a Chinese foreign trade corporation from a businessperson in China may facilitate communications.

Mail Service

Mail from the United States can be sent directly to China either by surface or air. The rates as of January, 1979 are:

Airgram—22¢.

Letter (surface)—20¢ for 1 oz.; 36¢ for 1 to 2 oz.; 48¢ for 2 to 4 oz.; 96¢ for 8 to 12 oz.; \$1.84 for 13 oz. to 1 lb.

Letter (air)—31¢ per ½ oz. up to 2 oz.; 26¢ per additional ½ oz.

Parcel (surface)—\$2.34 for first 2 lbs; 59¢ each additional pound or fraction thereof.

Parcel (air)—\$3.08 for first 4 oz.; \$1.37 for each additional 4 oz. or fraction thereof.

Surface mail takes 6-8 weeks for delivery; air-mail takes 7-9 days. Be sure to show the People's Republic of China as the country of destination when mailing to China.

It costs 60 fen to mail a post card from the PRC to the United States and 70 fen per ½ ounce for all mail letters.

Emergency Contact of Visitors

In the event it is necessary to contact a traveler in China on an emergency basis, it is best to notify the China Travel Service in Hong Kong or the U.S. Embassy in Beijing. (See Appendix 3 for phone numbers.)

Exit Procedures

Before leaving the country, the traveler should exchange Chinese Yuan for foreign currencies, since Chinese money may not be taken out of the PRC.

Before exit, the traveler's declarations of personal belongings will again be checked. Valuable items such as watches, cameras, pens, and radios registered at the customhouse at entry must be brought out again on the visitor's return trip. Items forbidden to be taken out of the PRC will be confiscated. These include: Chinese national money; gold, platinum, silver and other precious metals such as personal ornaments (unless they had been declared at entry), any books, photos, tapes, or other media which pertain to Chinese national secrets; items of artistic value pertaining to the Chinese Revolution, history or culture. Permission of the Chinese Cultural Agency is necessary to export any ancient artistic items or books.

After clearing customs, the visitor must walk from the Chinese side of the border to the Hong Kong side if traveling by rail. If leaving via CAAC, the traveler will clear Chinese customs at Bai Yun airport in Guangzhou and must clear Hong Kong customs upon arrival at Kaitak Airport.

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APPENDIX 2

Human Rights in the People's Republic of China (Mainland) and the Republic of China (Taiwan) — (Excerpts from Department of State's *Country Reports on Human Rights Practices for 1979*, 96th Cong., 2d Sess. 1980 pp. 437-446, 525-536.)

PEOPLE'S REPUBLIC OF CHINA

In traditional China, the law and legal institutions served as instruments for enhancing the power of the state and for disciplining the people to carry out its policies. With government acquiescence, the leaders of clans, villages and guilds dispensed a wide range of sanctions that included public censure, fines, ostracism, and corporal punishment. The formal machinery of the law confirmed and supplemented these unofficial processes administered by local leaders. The Chinese idea of "fazhi" often translated into English as the "rule of law" is more accurately rendered as "rule by law." The object was the management by the state of orderly, efficient and highly repressive procedures to ensure prompt, harsh and highly visible punishment of those whose offenses could not be managed by unofficial mechanisms. The notion that individuals might have rights against their social group, society or the state was an utterly alien concept.

The century preceding 1949 was marked by inept and corrupt government, foreign invasion and occupation, rebellion, civil war, warlordism, banditry, and revolution. The restoration of public order and development of China's capacity to meet the basic economic needs of its vast population were widely welcomed by the Chinese as the primary tasks of the government. After 1949, the newly established People's Republic of China (PRC) attempted to pursue these goals through development of a socialist society in which collective state aims took precedence over individual rights. These factors, combined with periodic political instability at top levels in the PRC government have all contributed to a poor record on individual human rights in China over most of the past thirty years.

In 1954, China's leadership adopted the first PRC constitution and for several years began to develop a legal system and encourage freer expression of opinion. The outspoken criticism of the political system by intellectuals in 1956, however, brought about a period of repression. This lifted briefly in the early 1960's when once again the leadership began drafting legal codes and allowing greater freedom in a number of fields. For nearly a decade to follow, however, severe ideological restrictions were placed on all fields of work and arbitrary rule prevailed. For several years from 1968, in fact, China was governed in a repressive manner.

There has been movement in the direction of greater freedoms in the past three years since the death of Mao Zedong and the purge of the so-called "Gang of Four" and their followers. The Chinese government appears to be making a serious effort to improve the rights of citizens by instituting a working legal system, expanding access to information, allowing some political dissent, adopting a more tolerant approach to national minorities and religious groups, liberalizing emigration policies and involving a larger number of citizens in local elections. Thousands of scholars, officials, and religious figures

purged during the numerous political campaigns of the past two decades have been rehabilitated. Many have been restored to positions of authority. China is a less oppressive place in which to live than it was three years ago. The press is a livelier forum for political debate, differences of opinion are publicly aired, contacts and friendships with foreigners are possible (but still limited), and thousands of Chinese students are going overseas.

The reforms have not yet broken entrenched patterns of harassment, arbitrary arrests and harsh punishment without free trial for political dissent. The Chinese government still maintains, particularly in remote areas of China, a large prison system and numerous labor camps. An extensive police system continues to monitor the political activities of China's citizens.

In China, a developing country of one billion people, scarce resources have created significant frustrations that have boiled to the surface as visible discontent. In the past year, with the general loosening of political controls, thousands of poor peasants, frustrated youth, unemployed workers and soldiers have demonstrated in China's cities and petitioned the government and party authorities for redress of grievances. Others have registered more general complaints against the political system and advocated more fundamental political and legal reforms. Chinese officials have frequently treated protest as a problem in itself, but on occasion sought to make use of it, and most recently China's leaders have begun to deal with the individual problems which the petitioners have raised.

Despite signs of improvement, the Chinese media and officials still condemn "human rights" as a "bourgeois slogan" without any relevance for China today. Ren Wandong, Chairman of the China Human Rights Alliance, was arrested April 4, 1979 while attempting to put up a wall poster criticizing PRC leaders' disregard for human rights guarantees. Putting up wall posters is a right guaranteed by the Chinese Constitution of 1978, but in February and March 1979 a proclamation was issued forbidding posters critical of "socialism" and restricting posters to less central, often inconvenient, areas of the cities.

In early December, Beijing's "Democracy Wall" was relocated away from a busy street to a small, more remote location; persons wishing to put up wall posters are now required to register their names and addresses so they can be held responsible for the "political and legal implications" of their posters.

In winter 1978-79, hundreds of youths in China's major cities spoke out against inequities in the political system. Some openly published unofficial journals, others spoke at rallies. Scores of them were arrested last spring and some in November; they are still being held in prison without trial. Many of these cases have been widely discussed among informed Chinese.

In October, 1979, two prominent dissidents, Wei Jingsheng and Fu Yuehua, were brought to trial separately on a variety of charges. Wei was found guilty of providing state secrets to a foreign journalist and was sentenced to 15 years in prison. He appealed the verdict, but it was upheld. Fu's trial, still open to appeal as of early January, resulted in a two year sentence for organizing a protest march and disrupting traffic. Both trials were "open," but admission was selective; no foreigners, including the press, were allowed.

The trials have been the subject of continued and spirited discussion among the Beijing populace, including thinly veiled debate in the public media. The basic issues are the extent to which open questioning of the prevailing system will be tolerated and uniform standards of law will be applied. The fact that this debate is taking place at all suggests that China has been moving toward a freer society with some increased respect for individual rights, albeit within a political system that emphasizes conformity and unity. Sustained respect for law and human rights will not come easily, however. Periodic waves of repression within the parameters allowed by the Constitution and new legal system are quite possible.

China's leaders seem determined to develop a legal system that would prevent the unchecked exercise of official authority. China has not had even a rudimentary working legal system for more than ten years, during which time the average citizen had no real recourse or protection from arbitrary arrest due to an off-hand comment, class background, or having sided with the wrong faction in the work unit. Amnesty International has documented some cases reflecting these factors in its 1978 report on China.

China's Constitution was most recently revised in February 1978. It includes articles guaranteeing citizens' rights pertaining to work and leisure; voting and standing for election; belief and non-belief in religion and propagating atheism; old age, illness, and disability care; education; participation in scientific and cultural activities; equality of women; lodging grievances with the government; freedom of person and home from unlawful arrest or search as well as speech, correspondence, press, assembly, association, procession, demonstration, labor strikes, and writing big-character posters. However, these rights are circumscribed by constitutional duties of citizens to uphold the leadership of the Communist Party and the socialist system, to promote national unity, to observe labor discipline and public order, to protect public property, and to respect social ethics and safeguard state secrets.

In June, 1979, China's National People's Congress (Fifth Congress, Second Plenum) adopted the "Law of Criminal Procedure," "Criminal Law," "Organic Law of the People's Courts," "Organic Law of the People's Procuratorates," "Organic Law for Local People's Congresses and Local People's Governments," and "Electoral Law for the National People's Congress and Local People's Congresses at all Levels." These became effective on January 1, 1980.

The media have conducted an extensive education campaign on the new procedures and have admitted that there has been resistance to the new laws in some areas, particularly from the public security organizations. In December 1979, the standing committee of the National People's Congress voted to retain older legal regulations of the past thirty years where they do not contradict the new laws. This decision is likely to result in much confusion since many old regulations were not well publicized and were contradictory as well. Only the old labor reform law has been officially revised to remove some of its more repressive elements.

In the international arena, China has shown a new willingness to discuss human rights. Chinese U.N. Third Committee representatives have called for greater attention to flagrant violations of human rights, while aligning China with Third World views which stress social, economic and cultural over political rights. They have at the same time asserted, however, that each country's own legal provisions affecting the rights of citizens are bound to differ and are internal matters and that, moreover, individual freedom must not be detrimental to the national public interest.

1. Respect for the Integrity of the Person, Including Freedom from:

a. Torture: The Department of State has no accurate information to indicate whether or not PRC authorities are still using torture. Torture is illegal under the new criminal law which went into effect January 1, 1980. Considerable psychological coercion, such as sustained group interrogation, is still used, however, toward dissidents and non-conformists.

b. Cruel, Inhuman or Degrading Treatment or Punishment: Cases of cruel punishment continue to be documented. Wall posters, court notices and refugee interviews indicate that lengthy or open-ended prison sentences for political and economic crimes often involve years of solitary confinement with little or no communication with family allowed. Executions for serious political crimes appear to have ended. The media have condemned the execution of a youth who spoke out against Mao and the "Gang of Four" in the early 1970's as an example of the transgression of political authority. Although summary executions have taken place, particularly during the Cultural Revolution, there have been no reports of them in the past two years. Recent media reports of capital punishment for serious crimes on the order of intermediate level courts have not clarified whether the Supreme People's Court gave approval or whether the defendants were allowed to appeal to a higher court--both of which are required by law.

c. Arbitrary arrest and imprisonment: Article 47 of the state Constitution states that no person can be arrested except by a decision of people's procuratorate. On February 23, 1979, the Standing Committee of the National People's Congress adopted a 15-point regulation which detailed the proper procedures for arrests and detention of citizens, including provision for arrest warrants, notification of charges and time limits for filing formal charges.

A form of habeas corpus was written into the 15-point arrent detention regulation, but it is too early to tell how successful this will be in changing past practice of detaining citizens for months and years without trial or even formal charge.

There are political prisoners in the People's Republic of China, but an accurate estimate of the total number is impossible. Thousands of intellectuals, officials, and religious figures imprisoned on political grounds in the past thirty years have been released and often publicly exonerated, even posthumously, in recent years. Yet the practice of political imprisonment continues. Refugee interviews and dissident sources also report that thousands of citizens have been arrested in the past few years for expressing errant political views. The "Gang of Four" and many of its alleged followers have been detained for three years without trial.

The government acknowledges holding political prisoners, describing these individuals as "counterrevolutionaries, ruffians, scum and lawbreakers." Prisons are generally not open for inspection by foreigners and the International Committee of the Red Cross does not have access to detainees.

d. Denial of Fair Public Trial: Under the new Criminal Code, public trial will be guaranteed, except for cases involving "State secrets," "personal secrets" and juveniles. The fact that even the "public" trials recently instituted by the authorities remain closed to foreign observers makes it difficult to evaluate the extent to which sentences are supported by evidence. Generally, criminal trials have not been public in China but several have been shown on nation-wide television as part of the campaign to educate the nation on the new laws. Based on the few trials shown on television, what the Chinese define as a "trial" is the equivalent of a sentencing hearing in the U.S.

Defendants are entitled to counsel according to both the Constitution and the newly enacted laws. However, no specific provision grants the right to counsel in the crucial pre-trial investigation process where the decision of guilt or innocence is usually made. Chinese officials have, however, indicated that defendants can confer in private with counsel. In the few cases shown on television, the counsels acted as advocates for mercy and did not contest the guilt of the accused. China has virtually no trained lawyers, a deficiency that the government has begun to remedy through the reopening of law schools and the examination of Western systems. There have been reports of special courts and hearings for political offenses, particularly if the person charged is a Party member. Last spring, several Chinese officials admitted to Western journalists that the new criminal code does not affect "party discipline" under which party members can be subjected to observation, detention and reform through labor. Civilians are apparently not tried by military courts.

e. Invasion of the Home: Article 47 of the state Constitution states that "the citizens' freedom of person and their homes are inviolable." In practice, however, this provision has seemed to offer little or no protection. Last spring during the roundup of dissidents, Chinese Public Security officials searched the homes of youths without notice or warrant and confiscated incriminating evidence.

2. Government Policy Relating to the Fulfillment of Such Vital Needs as Food Shelter, Health Care, and Education:

The PRC has the largest population of any country in the world and faces massive problems in feeding, clothing and employing its population. Its success in meeting minimal requirements in these areas has been impressive considering the limited resources available. While there is a disparity between urban and rural living standards, the government is making efforts to reduce the inequality, if possible. There is almost no evidence of starvation or malnutrition though there are occasional reports of severe food shortages in rural areas. Living quarters are often cramped and inadequate--a problem that the government is attempting to solve. Health care is available to all, either gratis or for very little, and the educational system provides for a universal six to nine year curriculum. Education in remote areas, and at higher levels, however, is still a problem.

Article 7 of the Constitution gives commune members the right to farm small private plots, engage in limited sideline production, and keep a limited number of live-stock for personal need, as long as the "absolute predominance of the collective economy of the people's commune is ensured..." Article 9 protects the rights of citizens to own lawfully earned income, savings, and other means of livelihood. Chinese are entitled to own their own houses and other personal property and have the right of inheritance.

There are significant differences in income and access to material goods. A government official, a senior university professor, or a skilled engineer might earn ten times the monthly salary of a young factory worker. But wealth is distributed fairly evenly. Top government and party officials enjoy a relatively high standard of living, but the lifestyle of the privileged few would look quite threadbare in most countries. Government officials now acknowledge a significant unemployment and underemployment problem involving perhaps up to 20 percent of the population and particularly serious among urban youth.

Increasingly strict population control measures involve government-sponsored peer pressure and economic disincentives such as cuts in wages or rations for more than two children. There have also been reports of forced sterilizations and forced abortions even in the later months of pregnancy, although it is not clear whether these are sanctioned by the government.

3. Respect for Civil and Political Liberties, including:

a. Freedom of speech, press religion and assembly: These are guaranteed under the state Constitution but generally have not been respected in practice. Political debate normally has been rigidly controlled but with periodic loosening. In late 1978, wall poster writers and youths in many of China's cities openly debated sensitive political questions such as China's human rights record, the nature of the Chinese political system, and the proper historical role of the late Chairman Mao Zedong. Many of these youths formed quasi-political dissident groups such as the "China Human Rights Alliance," the "April Fifth Society," the "Exploration Group," and the "Enlightenment Society." Chinese authorities tolerated this for several months but reacted strongly in March 1979, arresting dissident leaders and stopping publication of all but the most innocuous journals. In August and September, however, the pendulum again seemed to shift in the direction of less control until December when new regulations restricted the airing of grievances in wall posters.

The Constitution (Article 46) reflects an opposition to religious proselytizing. It says, "citizens enjoy freedom to believe in religion and freedom not to believe in religions and to propagate atheism." Chinese Communist ideology treats religion as a corrupting influence and in general the authorities have made the practice of religion very difficult. Nevertheless China is now turning to a more tolerant religious policy. The Chinese have resurrected the officially sanctioned religious organizations, including Buddhist, Islamic, Protestant, and the "Chinese Patriotic Catholic Church" (independent of the Vatican). Chinese branches of the YMCA and the YWCA have also been reestablished. The Chinese have recently published a new Protestant hymnal and stated that new translations of the Bible and the Koran will be published in 1980.

Minority peoples, primarily Muslim or Tibetan Buddhists, have enjoyed greater religious freedom than Chinese in the past but religious services are still carefully controlled and monitored in minorities areas. Christianity is still suspect for its association in China's historical experience with Western imperialism and true religious freedom is still far from reality.

In past periods of liberalization and again recently, China has responded to the special interests of the national minority peoples in such border areas as Xinjiang, Yunnan and Xizang (Tibet) by allowing some degree of local autonomy, official recognition of their languages and rapid promotion of their cadres (government and party workers). "People's governments" in these areas have a sizeable representation of minority peoples. At the same time, the central Chinese government maintains rigid military control and fosters significant migration by Han (Chinese) to these areas. Western journalists have observed and documented the domination of Tibetan culture and society by the Han.

Foreign publications are now widely available for sale only to foreigners and for foreign currency. They are stocked in Chinese libraries, but access is restricted.

b. Freedom of Movement within the Country, Foreign Travel and Emigration: Chinese citizens need permission to travel any distance within the country or to change residence. They must obtain "letters of introduction" from their unit of employment to purchase tickets and secure accommodations. They also need ration coupons for staple foods (distributed on a municipal or county of residence basis). There are numerous examples of families being split by job assignments. The government now appears to be ameliorating some hardship cases. Nevertheless, large numbers of Chinese do manage to travel or move without these documents.

A program to send large numbers of middle school graduates to rural communes or state farms has been in force since the early 1960's. An estimated 18 million youths have left cities for permanent life in the countryside, most of them involuntarily. Many of them have returned to the cities illegally, especially during the past two years when the government has been more lenient. Young graduates are still being sent out but in smaller numbers for shorter terms and with some element of choice involved. Meanwhile, the cities are making great efforts to organize service and commercial enterprises to employ both returnees and new graduates, and to provide educational opportunities for graduates.

Emigration controls have greatly loosened during the past two years. This is evident in the growing numbers of persons who have legally entered Hong Kong from the PRC: 26,000 in 1977; 67,500 in 1978; and 61,000 during the first ten months of 1979. Permission to leave China is now being given to students (whether government or privately sponsored), persons wishing to visit or permanently join relatives living abroad, persons who need to go abroad to settle estates or work in family businesses, overseas Chinese (ethnic Chinese who are nationals of other countries), and officials. There are some indications that PRC students cannot be accompanied overseas by family members to ensure that they will return to China.

Prior to 1978, processing of exit permit and passport applications routinely took four to six years. Since early 1978, processing time has been substantially reduced, but still varies from place to place.

c. Freedom to Participate in the Political Process: The PRC formally has a multi-party system. In reality, however, the Chinese Communist Party controls all facets of political, economic and social life. There is no freedom to participate in the choice of senior leaders or policies through democratic processes, and local elections have not been contested. New laws adopted by the National People's Congress call for free elections of local governmental leaders and Chinese official statements maintain that these

elections will be held by secret ballots with a choice of multiple candidates. There have not been enough elections to determine the degree of involvement by average citizens, especially in choosing candidates. Thus far, the few elections held have had multiple candidates, and a few non-Party contestants have won seats. The Chinese elite--the more than 38 million Chinese Communist Party members--participate in the selection of representatives to higher party organs. There is no direct election of senior party officials.

Under the Constitution, women participate equally in the political process and an increasing number of women are playing important roles in the party and the government. Nevertheless, China has traditionally been a male-dominated society and the political process, especially at higher levels, is still largely a male preserve. In economic life, equal wages for urban jobs have reduced economic discrimination against women, and women in post-'49 China have played a much greater economic role.

The trade union structure is controlled by the Chinese Communist Party and is used primarily as a means of channeling Party policy downward. The All-China Federation of Labor was reestablished in late 1978. The Federation has announced that workers will have a greater say in management, participate in the selection of factory leaders and will be allowed to elect shift leaders. Even though the right to strike is guaranteed under the 1975 Constitution, the few strikes of which we are aware were quickly suppressed. The major role of labor unions is to improve productivity and welfare, not to act as bargaining agents. Wages are set by the state.

4. Government Attitude and Record Regarding International and Non-governmental Investigation of Alleged Violations of Human Rights:

There is no dialogue between the PRC and official and non-official international human rights organizations. Chinese government leaders and officials have refused to respond to repeated requests by Amnesty International for meetings and explanations regarding alleged human rights violations. Chinese officials regard such requests as interference in the internal affairs of China.

TAIWAN

The past quarter century has brought significant advances in the observance of internationally recognized human rights on Taiwan, despite the official position that Taiwan is still in a civil war situation. However, at the end of 1979, a confrontation between the authorities and some oppositionists led to the arrest of certain opposition leaders and the suspension of three oppositionist magazines.

Taiwan remains essentially under authoritarian, one-party control operating under martial law provisions which authorities state are necessary owing to continuing confrontation with the People's Republic of China (PRC). Taiwan's political and legal practices also remain influenced by such traditional Chinese concepts as the duty of an individual to be obedient to the state and the use of law as an instrument for preserving social order rather than a means of protecting individual rights.

The Constitution, which guarantees such fundamental human rights and liberties as personal freedom and freedom of speech, press, religion, petition, and assembly, was adopted by the National Assembly of the Republic of China in 1946. At the height of the Chinese civil war in 1948, however, the same body enacted the "temporary provisions effective during the period of communist rebellion" and a "State of Siege" was declared over Taiwan in 1949 bringing martial law into operation. These laws, which remain in effect, limit constitutional guarantees of individual rights and freedoms. Together with other emergency legislation, they confer upon the authorities the right to control the press, censor the mails, prohibit strikes, conduct warrantless searches, register property, and prohibit meetings. The authorities have cited these extraordinary powers as the legal basis for most recent human rights violations.

1. Respect for the Integrity of the Person, Including Freedom from:

a. Torture

Torture is proscribed by Taiwan law and the authorities deny it is used. Reports of torture in Taiwan are now rare. When such reports appeared in the past, they were usually associated with pretrial detention, interrogation, and the extraction of confessions. The Amnesty International report on Taiwan for 1978 noted several instances in which confessions were reportedly extracted under duress.

Four prominent "oppositionist" political figures were reported by anonymous sources in the US to have been tortured after being arrested for their involvement in the December 1979 "Kaohsiung Incident." Checks into

these allegations failed to substantiate them. Prior to this however, two employees of an opposition magazine, arrested while soliciting attendance for an unauthorized political/human rights rally were reported by oppositionists to have been severely beaten while in police custody.

b. Cruel, Inhuman or Degrading Treatment or Punishment

Imprisonment is the usual form of punishment in Taiwan. Those convicted of sedition under provisions of martial law can be sentenced to death, but such executions have become infrequent. In 1979, one person, Wu T'ai-an (also known as Wu Chun-fa) was sentenced to death under the "Statute of Punishment for Sedition" and his execution was announced on May 28 by the Taiwan Garrison General Headquarters after the Supreme Military Tribunal Appellate Court upheld the sentence. Two of his associates were sentenced to life imprisonment on the same charge of attempting to overthrow the authorities by illegal means. A few individuals convicted on non-political crimes such as murder or, in some cases, armed robbery, have also been given the death sentence.

Prison conditions on Taiwan have been improving recently but reports alleging inadequate medical care continue. There have also been allegations of degrading treatment during periods of detention. Last year there was a case in which the person detained was subjected to continuous interrogation lasting several days without opportunities to sleep, bathe, or change clothes. There have been no reliable reports this year of such treatment.

c. Arbitrary Arrest and Imprisonment

In the 1950's there were reports of people disappearing without word of their fate. Arbitrary arrests are now infrequent, although individuals suspected of "sedition" as defined in martial law provisions, have in past years been detained and held incommunicado for weeks and at times months without being formally charged or tried. However, in most recent cases, the arrests have been announced publicly shortly after they took place and persons detained under martial law decrees are either indicted after an initial period of investigation or released. The code of criminal procedures states that a person arrested shall be sent to a procurator and released within twenty-four hours unless detention is justified. A suspect may be detained during investigation for up to a maximum of four months.

While the authorities do not acknowledge holding political prisoners, they stated at the end of 1976 that there were 254 persons in prison on sedition charges. Some persons have been released and others arrested since that time, but this is the most recent figure made public by the authorities. Exile groups charge the total is at least several times that number. The Department of State has no means to verify the figure. Many of those can be considered prisoners of conscience; some were convicted of terrorist acts.

The most recent, and best example of arbitrary detention was the 1978 case of a prominent Taiwanese political activist, Ch'en Chu, who was arrested after authorities found anti-regime literature in her apartment. She was detained for two weeks without access to her family or lawyer, after which she was released.

Many minor crimes on Taiwan have been handled under the law for the punishment of police offenses which empowers the police not only to arrest but also to prosecute and punish offenders. This law sometimes has been invoked against political activists. The authorities began in 1979 to consider revisions of this highly unpopular law, including suggestions that punishment be determined by a special court rather than the police.

d. Denial of a Fair Public Trial

Stringency in the application of martial law has varied over time and with individual cases. Opposition to basic policy, e.g., expressing views contrary to the authorities' claim to represent all China, advocating accommodation with the People's Republic of China (PRC), and supporting an independent legal status for Taiwan, are considered seditious and punishable under martial law. The authorities continue to try civilians suspected of "sedition" in military courts though the frequency has diminished in recent years. From July 1978 to June 1979, 15 cases involving 26 civilian defendants reportedly were brought before courts martial compared to over 100 during a similar period in 1976. While due process and normal habeas corpus procedures are prescribed for civil trials, such procedures do not appear to be safeguarded or applied in a consistent fashion in cases tried under martial law. In both civil and martial law trials, the accused may be detained during the investigation and has a right to counsel only after the procurator has filed an indictment following his investigation. The right to a lawyer is guaranteed in the Code of Criminal procedure and it directs that a public defender be provided free of charge in cases where the defendant is indigent and the charges bring sentences of three or more years. There is, however, no guarantee of free access to counsel in private.

In the wake of the "Kaohsiung Incident" the authorities arrested at least 26 individuals, most of whom were connected with the organization of a human rights demonstration in Kaohsiung which erupted in violence. These arrests were viewed by many as politically motivated because the arrests were for the capital crime of "sedition" and seemed far more severe than warranted by the incident itself. The "sedition" charge enables the authorities to hold the arrestees for as long as four months for investigation before the prosecutor must file a formal indictment.

In the recent past, members of the accused's family have been allowed to attend the trial and occasionally even the press and carefully selected members of the public as well. While appeals to higher military courts in some cases result in reduced sentences, lower military

court convictions have not been reversed.

A trial which generated much controversy on Taiwan in 1979 was that of the 76 year-old former Kaohsiung County Magistrate, Yu Teng-fa, who was arrested with his son in January 1979 on sedition charges and sentenced to eight years imprisonment for "failing to report a communist spy" and "propagandizing for the communists." With respect to the latter charge, the prosecution submitted evidence that Yu Teng-fa had distributed photocopies of a December 1978 Japanese newspaper article reporting the PRC National People's Congress message to the people on Taiwan. The trial was held in public, members of Yu Teng-fa's family and the press attending; there was, however, criticism of the military court both for failing to subpoena as requested by the defense several witnesses who had provided sworn statements against Yu Teng-fa, and for the length of the sentence, which was tantamount to life imprisonment for a man Yu Teng-fa's age.

Another case which generated considerable controversy was the suspension from office of the popularly elected Taoyuan County Magistrate, Hsu Hsin-liang. Hsu was impeached by the Control Yuan and suspended from office for two years by the Judicial Yuan's Committee on the discipline of public functionaries for campaigning for others in the December 1978 elections, signing an "anti-government" declaration protesting the arrest of Yu Teng-fa, and being absent without leave to participate in an unauthorized demonstration concerning the Yu Teng-fa case. Following impeachment, Hsu Hsin-liang sent his defense in writing to the Committee. The Committee's proceedings, however, were not public and did not provide further occasion for the accused to rebut the charges. Moreover, there was no appeals procedure.

The district and high courts are under the administration of the Ministry of Justice. The authorities announced their intention in April 1979 to transfer this court system to the Judicial Yuan within one year. If implemented, such a transfer will provide greater judicial independence from the Executive Branch through separation of judges and procurators.

e. Invasion of the Home

In contrast with the situation two decades ago, invasion of the home is not a common practice in Taiwan. The nonviolent searches which do occur are normally, though not always, authorized by warrant.

2. Policies Relating to the Fulfillment of such Vital Needs as Food, Shelter, Health Care, and Education

As a result of public policies, the gap between the rich and poor is steadily narrowing and in terms of income distribution Taiwan's society is one of the most egalitarian in the world. The ratio of per capita

income between the top 20 percent and bottom 20 percent of the population has been reduced from over five to one in 1966 to 4.18 to one in 1978, against a background of rapid economic growth in a relatively free market economy. Programs have been designed to ensure that rapid industrialization does not exacerbate the moderate disparity that exists between the rural and urban sectors. Tax policy is designed to alleviate the direct tax burden on lower income groups by emphasizing collection of tariffs and sumptuary taxes while maintaining a high degree of progressivity in the personal income tax structure. The authorities in 1979 also submitted new legislation, the Social Relief Law, to assist low-income people. Rapid and large-scale urbanization results in somewhat congested housing in Taiwan's major cities. Nevertheless, slum conditions are gradually ameliorating and housing in both rural and urban areas is generally adequate. In February 1960 it was announced that public housing has been included in a list of major new construction projects to be undertaken under the first (1976-1981) and second (1982-1987) six-year economic development plans. An increasing number of families are beginning to enjoy modern conveniences and luxury items. For instance, in 1968 only about 18 percent of all households had TV sets while in 1978, the most recent year for which statistics are available, almost all households did. In 1978 over 87 percent of all households had a refrigerator and over 63 percent had motorcycles. The right to own and hold private property, including land, is guaranteed by Article 15 of the Constitution. The only exception is a general prohibition, under the terms of the 1949 Land Reform program, against holding more than 7.5 acres of wet farmland or 15 acres of dry farmland.

Taiwan has developed an effective public health program and a system of health stations throughout the island. All major epidemic diseases have been practically eradicated. Health promotion programs include maternal and child health, family planning, school health, dental health, special care for disabled children, communicable disease control, and environmental sanitation. Public medical insurance covers about 3.2 million civil servants and military personnel. According to statistics, in 1978 Taiwan had one hospital bed for every 464 people and one physician for every 1,360 people. Life expectancy is among the highest in the world. Adult literacy on Taiwan is 93 percent. About 4.5 million people, 26 percent of the population, are presently in school. In 1968, free compulsory education was extended through junior high school. About 60 percent of junior high school graduates pass examinations and enter three-year senior high and vocational schools. Taiwan's extensive system of universities, colleges, junior colleges, and other institutions of higher learning currently enrolls, through competitive examinations, 317,000 undergraduate and graduate students -- about 16 percent of college-aged youth. In 1978 about 56 percent of the population over the age of 15 had a secondary or college education compared with 43 percent in 1969.

People in Taiwan enjoy a good diet. Per capita calorie and protein intakes have gradually increased since the 1950's, reaching in 1978 estimated intakes of 2,800 calories and 78.0 grams of protein per day. These are among the highest in the world.

Over the past decade wages have risen in the manufacturing sector at a compound annual rate of 18 percent measured in current U.S. dollars. The average monthly earnings for a worker in the manufacturing sector rose from US \$34 in 1969 to U.S. \$209 in 1979 as the monthly hours worked dropped from 238 to 220.

This fulfillment of vital human needs is not hindered by corruption. Cases of corruption involving officials have been uncovered, investigated, and prosecuted.

3. Respect for Civil and Political Liberties, Including:

a. Freedom of Speech, Press, Religion and Assembly

Individuals are not free to question publicly basic political policies of the authorities. Martial law and the publication law give the authorities the right to limit freedom of speech and freedom of the press, both of which are guaranteed in the constitution (See Introduction and Section 1.d). The authorities conduct post-publication censorship and recall articles and publications that oppose "basic policy" or which are regarded as excessively critical of the leadership. They also censor foreign publications, but in recent years have lessened restrictions and allowed greater access to information on developments abroad, including reports on developments in the PRC.

In the past publications critical of the authorities have been banned, and there are credible reports of independent newspaper owners being forced to sell out to officially sanctioned purchasers. A number of such outspoken publications were similarly dealt with this year as well, and several writers have been arrested on charges ranging from "sedition" to "propagandizing for the communists" and publishing unregistered publications. Nevertheless, the one-year suspension on registrations for new magazines announced in 1978 was removed as scheduled on March 1, 1979, and a series of new magazines has been published. The two most prominent of these publications were banned in the aftermath of the "Kaohsiung Incident," a demonstration-turned-riot which was organized by the magazine Formosa.

In late December, 1979 the popular oppositionist magazine The Eighties Monthly was suspended for a year after it published in its seventh issue several cartoons depicting the ruling authorities as no less oppressive than the communist government in the People's Republic of China. Immediately after the ban, the pub-

lisher of The Eighties was given permission to put out a new magazine called The Asians. The publisher has decided, however, to postpone publication of the new journal because of the sensitive political situation.

Freedom to practice religion is respected on Taiwan. The predominant religion is a combination of Buddhism, Taoism, and Confucianism. Other religions include Christianity and Islam. Some pseudo-Buddhist sects and Reverend Sun Myong Moon's Christian Unification Church have been banned.

In 1977 the Presbyterian Church in Taiwan (170,000 members) issued a "Declaration of Human Rights." The church leadership reaffirmed its commitment to this declaration on its second anniversary in 1979. By calling for the creation of an "Independent Taiwan," the declaration has placed Taiwan's Presbyterians in direct opposition to the authorities' basic policy of the unity of China. The authorities view the manifesto as a highly political document which calls their very legitimacy into question. In 1978 the authorities tried to block the reelection of one of the declaration's authors as a moderator of the General Assembly (highest governing body) of the Presbyterian Church in Taiwan; and on some occasions Presbyterians seeking to travel abroad on church business have been denied exit permits.

There have also been reports of various forms of pressure brought against other missionary groups who have been active in social work which the authorities consider to be unacceptable political activity.

In early 1979 the authorities indicated they intended to legislate a new "Statute on Temples and Churches." The current law enacted in 1929 applies only to Buddhist and Taoist Temples and is not considered adequate for a society which also has various Christian and Moslem groups. While authorities said the new law would not curtail freedom of religion, the Presbyterians feared the law was aimed at them and would give the authorities considerable powers which could be used against the church. In response to opposition from religious groups on Taiwan and criticism from abroad, the authorities indicated in October that because of "differing opinions" in various quarters the draft was being reviewed. Recent news articles indicate that the authorities are preparing to resubmit a new draft law on the administration of churches and temples, though there is no indication of whether the offending sections will be deleted.

The constitution provides for freedom of assembly. While assembly for nonpolitical purposes has generally been permitted, assembly for political purposes, except during election periods, has often been curtailed. Martial law, which gives a military commander the right to stop or dismiss a meeting, and the law for the punishment of police offenses, which requires "groups of people" to

obtain approval for gathering in advance, have been used to ban or disperse public meetings by those suspected of dissident views. In one recent instance Taoyuan County Magistrate, Hsu Hsin-liang was suspended from office for two years for, among other charges, participating in an unauthorized demonstration in January to protest the arrest of Yu Teng-fa. (See section 1.d) While retaining the right to disapprove public gatherings, until recently the authorities had demonstrated increasing tolerance by permitting public meetings of outspoken political activists making critical speeches.

The December 10, 1979 "Kaohsiung Incident" is the most recent example of the authorities' restriction of freedom of assembly. The incident took place in the southern Taiwan port city of Kaohsiung. There a group of oppositionist activists who publish the popular monthly magazine, Formosa, planned a December 10, 1979 rally commemorating International Human Rights Day. These opposition figures had previously organized several similar outdoor rallies, though the number of demonstrators rarely exceeded 5,000. The December 10 rally, however, was planned to include as many as 30,000 participants.

As required by law, the rally organizers submitted an application for a demonstration permit to the Kaohsiung municipal police in mid-November. About two weeks later the police declined to approve the permit on the grounds that public order would not be maintained with so large a number of demonstrators. The oppositionists, however, felt that the denial of a parade permit was politically motivated and designed to prevent the general public on Taiwan from seeing evidence of public support for oppositionist policies. Because of this, the organizers went ahead with their rally in spite of lack of approval. The demonstrators, about 500 in number, broke through police lines and proceeded with a torchlight march which attracted several thousand onlookers. The police were later joined by military riot troops called in when the demonstration got out of hand. The demonstration broke up six hours after it began. Official sources reported that the violence resulted in one civilian injured and 182 police casualties; one press account immediately after the demonstration listed 47 police and 92 civilian casualties, both "mild and serious." Following the demonstration, the authorities began a general crackdown on the leadership of Formosa magazine which had organized it. A total of 65 people were arrested by military authorities and charged with the capital crime of "sedition." One of those arrested was the prominent Taiwanese legislator, Huang Hsin-chieh. During the sweep, a number of other were detained without warrants in connection with the incident. Some were later released after serving short sentences for minor offenses. Formosa magazine, along with The Eighties Monthly, was suspended for a year though for reasons allegedly unconnected with the Kaohsiung demonstration. The arrests, and especially the serious charge of "sedition" made against those arrested, have caused considerable

anxiety among Taiwanese overseas, who have charged that the arrests were politically motivated in an attempt to eliminate an influential part of the opposition in Taiwan.

b. Freedom of Movement within the Country, Foreign Travel and Emigration

The constitution provides freedom of change of residence. There is general freedom of internal travel in Taiwan except to sparsely populated mountainous areas, for which a police pass is required to control entry into secure areas and to protect the aborigines from exploitation.

Travel abroad or emigration has become gradually freer, except to the People's Republic of China and other communist countries. Taiwan has recently announced that businessmen will soon be permitted to travel to and do business directly with certain Eastern European countries. As Taiwan's economy has prospered, foreign exchange restrictions on travel have been relaxed and the number of people traveling abroad and living overseas has increased dramatically. In January 1979 authorities stopped discouraging travel specifically for tourism and began to issue passports endorsed for that purpose. Between January and October almost 150,000 such passports were issued. This new practice has been accomplished by some liberalization of passport regulations which led to further increases in travel abroad. For defense mobilization reasons the new tourist passport measures do not apply to servicemen or men between the ages of fifteen and thirty.

There are credible reports of people who have been denied exit permits for security reasons or because they or their relatives abroad criticized the political establishment. A few foreigners have been denied entry visas on political grounds.

c. Freedom to Participate in the Political Process

Reflecting the claim of the authorities on Taiwan to be the sole legal government of all China, there are a series of central entities over and above those which pertain solely to the island of Taiwan. Among those are the National Assembly, which elects the President and Vice President, and the Legislative Yuan, which is the central legislature. There have been no general elections of these two bodies since 1948, the authorities taking the position that such elections cannot be held until they reestablish control over the Mainland. Beginning in 1969 "supplementary elections" for these central bodies have been held in order to choose additional officials from Taiwan and adjacent islands. These elections, however, have not substantially altered their composition. In the 1978 supplementary elections for the Legislative Yuan, for example, only somewhat over 10 percent of the seats still occupied by members were up for election.

Since 1950, democratic institutions have been established at the provincial and local levels and have functioned reasonably well. Universal suffrage exists for all citizens twenty years of age or over. Elections have been held regularly over the past two decades for all local (i.e., Taiwan Province) legislative offices. However, the Taiwan provincial governor and the mayors of the municipalities of Taipei City and, as of July 1, 1979 Kaohsiung City are all appointed by the Central Authorities, which exercise considerably greater power than the local institutions.

Despite the theoretical existence of two opposition parties, Taiwan has effectively a one-party political system. Candidates who oppose the Ruling Nationalist (Kuomintang or KMT) thus run as independents. Even though the majority of candidates elected are from the KMT, independent candidates have been increasingly successful in the recent past. In the 1977 elections for the Taiwan Provincial Assembly such candidates won about 30 percent of the seats. KMT candidates have generally benefitted from prominent media coverage and the limitations on civil and political rights which handicap opposition. Nevertheless, during the campaign period of the 1978 "supplementary elections" speeches, rallies and to some extent organization by independent candidates was permitted to a greater degree than ever before.

Although oppositionist activity expanded during 1979 and the Taiwan authorities appeared to have adopted a more moderate attitude, the December 10, 1979 "Kaohsiung Incident," and the subsequent arrests could reverse this improvement in the political climate.

Following President Carter's December 15, 1978 announcement on the normalization of U.S. relations with the People's Republic of China, President Chiang Ching-kuo, under martial law provisions, postponed the National Assembly and Legislative "supplementary elections" scheduled for December 23. Taiwan authorities have said they will be rescheduled as soon as Taiwan's internal and external situation is considered stable, but probably not for twelve months after the termination of the Mutual Defense Treaty with the U.S. on December 31, 1979. Independent candidates generally supported the postponement of the elections.

The locus of power on Taiwan is the Central Executive Branch, which is not subject to direct elections. While representation of native "Taiwanese" (descendants of Chinese who migrated from the Mainland a century or more ago and now constitute about 85 percent of the population) in legislative institutions, both local and central, has been increasing, Taiwanese have less representation in the powerful Executive Branch, which they say is dominated by "Mainlanders" (Chinese who came to Taiwan in 1949 and their descendants). There have been recent

increases in the number of Taiwanese holding Executive Branch positions; including the Vice President, about one third of the Cabinet (including the Vice Premier, the Minister of Interior, the Minister of Communications, and three Ministers without Portfolio) and the Governor of Taiwan, among others, are all Taiwanese. Critics charge that none of these posts is really a key power position.

There is no meaningful tradition of trade unionism on Taiwan, and labor unions do not exercise significant influence either in the economic or political sphere. While labor unions are permitted to organize, walkouts and strikes are prohibited under martial law. Collective bargaining, although provided for by legislation, does not exist on Taiwan.

There are few laws that discriminate against women; those which do relate mostly to divorce issues and inheritance. Women have been active in politics and regulations governing elections make some provision for guaranteed minimal representation of women in local and central legislative institutions. However, the Confucian tradition permeates all levels of society and its strong anti-feminism has resulted in pervasive and ingrained social patterns that relegate women to a clearly subordinate role. Rapid industrialization and a gradual liberalizing trend throughout society are now changing the status of women. The percentage of women in institutions of higher learning has increased slightly over the last ten years, to approximately 39% during the 1978-1979 school year, about 39 percent were women. Women occupy prominent roles in such professions as business and publishing. A fledgling "Women's Rights" movement is slowly growing. The authorities are suspicious of this movement both because it attacks some of the fundamental tenets of Confucianism and because they tend to see any group which is critical of the established order as "subversive."

4. Attitudes and Record Regarding International and Nongovernment Investigation of Alleged Violations of Alleged Violations of Human Rights

The authorities on Taiwan have cooperated with outside investigations of human rights conditions. International organizations such as Amnesty International have visited Taiwan and met with officials there. In 1976 the Premier offered to allow a visiting U.S. Congressional Delegation to visit Taiwan prisons, but the invitation was declined.

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